



REGULAR TOWN COUNCIL MEETING

Monday, May 6, 2019 at 7:30 pm

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

- a. Approve Minutes

Approve Regular Town Council Meeting Minutes of 04/15/2019 & Workshop Meeting 04/29/2019

Exhibit: Agenda Report Number 1

Recommendation: Approve Minutes

Attachments:

- Regular Town Council Meeting 04/15/2019 (TownCouncilMinutes0415_2019Draft.pdf)
- Town Council Workshop 04/29/2019 (TownCouncilWorkshopMinutes0429_2019.pdf)

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
 - a. T&G Committee
 - b. Park & Recreation Board
 - c. Planning & Zoning Board
8. STAFF REPORTS
 - a. Administrator - EXCUSED
 - b. Clerk
 - c. Fire Chief
 - d. Public Works Director

9. PUBLIC COMMENTS

Comments at this point may address items NOT on the AGenda. Comments related to

subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required)

Five (5) Minute Limit per Speaker

10. PUBLIC HEARINGS / SPECIAL ORDERS

0

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

a. Request Malabar Declare Sand Hill Crane a Protected Species

Resident Lloyd Behrendt - Agenda Request Form

Exhibit: Agenda Request Form

Recommendation: Direction to Staff

Attachments:

- Sand Hill Crane Protection Request (item_2.pdf)

b. Henry Morin on Proposed Land Use Designation to CG for Parcel 568 at NE Corner of Babcock and Osage Street

Presentation

Exhibit: Agenda Report Number 3

Recommendation: Action- Direction to Applicant

Attachments:

- Land Use Change Request (Item_3.pdf)

12. ACTION ITEMS

ORDINANCES:0

RESOLUTIONS:2

MISCELLANEOUS:3

a. Support Brevard County Ordinance to Require Signage to Sell Fertilizer in Summer (Reso 06-2019)

RESOLUTION

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE SUPPORT OF BREVARD COUNTY'S ORDINANCE TO REQUIRE SIGNAGE AT VENDORS SELLING FERTILIZER BETWEEN JUNE AND SEPTEMBER TO ALERT CONSUMERS OF THE IMPORTANCE OF REDUCING TMDL IN THE IRL; PROVIDING FOR REPEAL OR RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 4

Recommendation: Adopt Reso 06-2019

Attachments:

- Resolution for Fertilizer Sales Sinage (Item_4.pdf)

b. Amend Administrative Fees (Reso 07-2019)

RESOLUTION

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO THE AMENDMENT OF OF ADMINISTRATION AND PERMIT FEES REQUIRED TO BE ESTABLISHED BY VARIOUS ORDINANCES OF THE TOWN OF MALABAR; PROVIDING FOR APPLICATION FEE TO NAME A NEW STREET; PROVIDING FOR APPLICATION FEE WHEN REQUESTING LAND USE DECISIONS NOT OTHERWISE COVERED; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AND EFFECTIVE DATE.

Exhibit: Agenda Report Number 5

Recommendation: Approve Reso 07-2019

Attachments:

- Administrative Fees Resolution (Item_5.pdf)

c. Proposed Depth of Six Parcels on the south side of Malabar Road for both R/LC and OI Land Use Designations on FLUM before final adoption

MISCELLANEOUS

Exhibit: Agenda Report Number 6

Recommendation Action - Direction to Staff

Attachments:

- F.L.U.M. Designation Changes (Item_6.pdf)

d. Proposed Access to 20-acre parcel from unnamed ROW adjacent to Beekeeper/Old Mission Road - Request from Chris Thomas

MISCELLANEOUS

Exhibit: Agenda Report Number 7

Recommendation: Action - Direction to Staff

Attachments:

- R.O.W. Access Request (Item_7.pdf)

e. Waive Building Permit Fees for 2125 Howell Lane Reconstruction after house fire

MISCELLANEOUS

Exhibit: Agenda Report Number 8

Recommendation: Action - Direction to Staff

Attachments:

- Waiver of Permitting Fees at 2125 Howell Lane (Item_8.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

a. Discussion on Special Assessment

Attachments:

- Special Assessment (Item_9.pdf)

b. Discussion on Possible Ordinance regarding Public Notices

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

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

Board;

17. ADJOURNMENT

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

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

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Published on 05/03/2019
at 10:20 AM

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

APRIL 15, 2019 7:30 PM

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

A. CALL TO ORDER:

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

B. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DICK KORN
	DANNY WHITE
TOWN ADMINISTRATOR:	MATT STINNETT, excused
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

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

D. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting Minutes 4/01/19

MOTION: CM Vail / CM Korn to approve the 4/1/19 regular meeting minutes as submitted.

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

E. ATTORNEY REPORT: Nothing at this time.

F. BCSO:

H. STAFF REPORTS:

ADMINISTRATOR: TA excused

CLERK:

- Watched government finance (FGFOA) webinar last week on incorporating Strategic Planning into the budget process to discuss items that might be funded, those that should be funded and those that must be funded. Our budget process will be starting soon. We need to focus on how we are going to fund the Capital Improvement Projects that have been identified and prioritized.
- Remind Council of the need to determine if they will supporting an ordinance to put the referendum question on the ballot to increase the ad valorem rate. If so, the tax payers need to be informed of the need for the increase long before November
- The six property owners on the south side of Malabar Road have been sent notifications of the May 6, 2019 Council meeting to discuss either the 660' depth or 1320' depth for their land use designations. They have all been invited to attend and speak at the meeting.
- The Comprehensive Plan amendment will be on agenda for its final approval Public Hearing at the May 20, 2019 meeting.
- Staff has been working on code enforcement issues with property owners and for the most part have gained compliance. Hwy 1 was cleaned up, the pigs at 1620 Weir Street are gone, property on Hall Road is being cleaned up and the person on Quarterman has been in to speak to Matt and said he would work on compliance.
- Remind Council of the need for articles for the MailBoat

I. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) Five (5) Minute Limit per Speaker.

Speaker Card:

Drew Thompson, Brook Hollow, Chair of T&G. Went over the April 1 update and then at their Trails & Greenways mtg on 4/8 they added three more projects for a total of seven. Looking for potential funding from FDOT. Marie St to Leghorn is part of the south Brevard linear trail system. Using the Jordan Blvd access to access the Jordan Scrub. Have a connector to US 1. The third item would tie in to the mountain bike trail system. By the Melb Tillman and near the Grapefruit Trail – same concept. Wanted to get it in front of Council before submitting it for consideration and the due date is tomorrow.

MOTION: CM Vail / CM White to approve the three additional trail projects. Discussion. CM White had conversation with Palm Bay CM Kenny Johnston and they are very excited to work with Malabar to provide these trail connections.

CM Rivet asked Drew if he was asking for money – Drew said no money at this time. CM Korn said there are wetlands on the Marie Street/Leghorn ROW. Drew said EELs said at one time that they could provide wood if we could get the labor for a boardwalk. Could maybe get local contractors or with the Bike group and GV volunteers. CM Vail said it they should look at the east side of the fence along Marie Street; it is much higher than the actual travel way.

Vote: All Ayes.

Barbara Cameron, Hall Road, regarding the culvert that popped up at the west end of Hall Road. She mentioned the culvert from Flashy Lane to Melb Tillman canal. What is going on down there? Council explained project.

J. PUBLIC HEARINGS/SPECIAL ORDERS: 0
K. UNFINISHED BUSINESS/GENERAL ORDERS

L. ACTION ITEMS:
ORDINANCES for FIRST READING: 1
1. Approve First Reading of BA to FY 2018/2019 Budget (Ord 2019-05)

Ordinance read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET AMENDMENT IN THE FISCAL YEAR 2018/2019 TO PROVIDE FOR REALLOCATION OF FUNDS WITHIN DEPARTMENTS; PROVIDING FOR ADDITIONAL FUNDS FROM UNRESTRICTED FUNDS ON DEPOSIT; TO PROVIDE FOR THESE ADDITIONAL EXPENDITURES AS APPROVED BY COUNCIL; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Approve First Reading of Ord 2019-05

MOTION: CM Korn / CM Rivet to approve first reading of Ordinance 2019-05. Discussion: CM Ball is not questioning the job the FD is doing – they are doing a stellar job. He said it is not right to take money out of reserves or other departments. Should ask the Atty to draft an MSTU or MSBU and let the FD be funded that way just like the Sheriff Dept.

CM Korn felt this amendment would be a good show of support to retain the current staff at FD.

Lt. Hooker gave a power point presentation related to the duties of the Driver/Engineers and how integral they are to the professional operations of the Fire Dept.

Atty said referring to MSTU/MSBU, don't get lost in terminology. Call it a Special Assessment. CM Korn said the FD is part of the Town. What he brought up at last meeting

– they have a combo dept. Four of them are not eligible for health insurance. He wants to keep them here by making them fulltime and offering health insurance. He referenced the benefit to the ISO rating by having fulltime employees.

CM White had issues with the numbers, stating the wages should be higher if going from part-time to fulltime. Questioned Lt. Hooker about the two that are leaving. How long have they been there? About a year. It is a starter position, but they must have all the same certifications. Lt. Hooker said it is now harder to get qualified personnel to replace them.

CM Vail all we are trying to do is break it out – only funding source.

Much discussion on various methods to fund the fire dept, personnel only, entire department, as a special assessment, fire assessment, flat rate or increasing millage. All of Council supported the Fire Dept but the issue was how to budget going forward and budget within our means. Some discussion was impassioned. CM Vail referred to the Civility Pledge they all took and the need to keep discussion civil.

CM Rivet – you have legitimate concerns about not taking money out of reserves. He is willing to listen to any alternative methods of funding. Need to adequately fund the fire department budget.

Holly Yolles, Corey Road, said the taking of funds from reserves part of the budget amendment frightened her. Can't fix someone who is leaving now. Chief said three paid driver/engineers will be going to other depts. Cocoa went to special assessment.

CM White said what Lt. Hooker explained that it is not so easy to replace with the training requirements. Unfortunately, this should be dealt with during the budget process. He was fully prepared to discuss the FD funding.

CM White would be opposed to a Special Assessment without a ballot measure going to the voters.

CM Korn said one of them would be on any vehicle responding. He referenced a meeting he attended with the Brook Hollow HOA – one person asked if our low millage was doing the job. We have a responsibility to provide public services and safety that is adequate to justify us being an incorporated municipality.

Clerk Franklin explained that we have done budget amendments for the last two years to recognize additional revenue that was received over what was budgeted. Malabar has 900K in investments, 500K in local accounts and additional money in the SBA.

CM Rivet said the concern is how we are going to pay for it for remainder of this fiscal year. His caution is if we do a Special Assessment (SA), do we do it for only the increase or the total personnel cost. CM Ball said the SA should only address the shortage. CM Vail said a SA would not fund the whole dept – only the shortfalls.

Roll Call Vote: CM Ball, Nay; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Nay. Motion carried 3 to 2.

CM Rivet and CM Ball want the amount taken from reserves to go back into reserves when available.

CM Korn said he will be out of town on May 6 for work and asked if they could hold public hearing on May 20, 2019. No objections.

RESOLUTIONS: 0
MISCELLANEOUS: 0

Chair excused the Attorney at this time.

M. DISCUSSION/POSSIBLE ACTION:

1. Discuss Road Improvement Standards

This was CM Vail's request.

CM Vail said there was a misunderstanding at the last meeting. Wants Council to understand that there is a wide variety of road types and improvement processes depending on the ROW available. Franklin went through the road improvement process and road payback process. The road paving of an improved road is a separate process and does not have a "payback" – it is a special assessment and has its own process.

Atty is working on case law and when he is ready we will ask for the workshop.

N. PUBLIC COMMENTS: General Items (Speaker Card Required) none

O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: Referenced vehicle thefts in the last 2-3 weeks from being unlocked. Lock your vehicles. Contact the BCSO and ask if they are aware of these.

CM Vail: call BCSO

CM Rivet: email from Bill Conlon, trees on adjacent property hanging over his property and he forwarded to CM White. Look at FD funding during the budget process.

CM Korn: he has noticed on Weber – increased number of pedestrians. Need to get more volunteers for FD. They do the training here at Fire Station.

CM White: nothing

Mayor: Went to P&Z meeting last Wednesday and they completed the sign Ord and it will come back to Council. He gave presentation on having manufacturing in CG. They are looking into that. Manufacturing is creating a product from raw material.

P. ANNOUNCEMENTS: Openings on Board of Adjustment and Park and Recreation Board.

Q. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at _____ PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 5/6/2019

MALABAR TOWN COUNCIL WORKSHOP MEETING MINUTES

APRIL 29, 2019 7:00 PM

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

A. CALL TO ORDER:

Chair, Mayor Patrick Reilly called the meeting to order at 7:00 pm.

B. ROLLCALL OF THOSE IN ATTENDANCE:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DICK KORN
	DANNY WHITE
TOWN ADMINISTRATOR:	MATT STINNETT
TOWN CLERK/TREASURER:	DEBBY FRANKLIN
PUBLIC WORKS DIRECTOR	TOM MILIORE

C. WORKSHOP ACTION: Discuss Public Works Road Projects.

Mayor said this workshop was to continue PW projects – Discussion of Road projects and turned it over to TA Stinnett.

TA Stinnett had prepared a list of potential projects they have identified. He also had two pages of pictures showing some of the damaged roads and sidewalks that need attention.

TA said PW has started working on Matthews Lane. Appleby Lane was the one that had bad material put down years ago and continues to work its way to surface. PW will try and address that by pulling the old material out and replacing with clean material.

Waring Lane, south end. PW Director Tom Miliore said the proposed aprons will help when going from a paved road to a dirt road but need depth of more than 20 feet; ideal would be 75 feet. CM Vail said there was talk of paving petition for this area of Waring. Clerk Franklin has not received any requests for a petition. CM Rivet would like to see paving for Appleby to cure that problem. Discussion of paving petition process.

Mayor asked about aprons – asphalt for about 75 feet is the ideal. Before they went in only 20 feet. PW Tom said when they did a pipe replacement under Osage at Babcock Street, the State made them come out and sweep the rock and millings off Babcock Street regularly because there was no paved apron at Babcock Street and Osage Road was a dirt road with millings and vehicles kicked the material onto Babcock Street.

Part of the problem at intersection repairs is due to cutting the corner short. We could curb them. Except trucks could run over it and damage the curbing. At Waring and Atz it is the big dump truck vehicles tearing up the corners. CM White said if we paved a little more and then add curbing it would keep cars on roadway, but dump trucks and the like would ride up the curbing and cause damage.

LaCourt and Hall is another area that is bad. They need to bring it in 4-6 feet. Can they do numerous aprons at a time? Do we have an estimate yet? TA Stinnett said that is a priority for Council consideration. CM White said it is a great idea. CM Vail explained when you are transitioning from a dirt road onto paved road or the reverse, having 75 foot of pavement to either prepare for the turn onto or off of allows for complete vehicle alignment before hitting the dirt portion.

CM Ball said on west side of Marie Street south of Malabar Road, put some material to get the grades back up. The letter carrier is spinning out and digging ruts in front of the mailboxes. He sees it on Marie Street. Also, on Highway 1.

Mayor said on the aprons, how much prep work is required by PW? PW Dir Tom said there is not much prep work required. Mayor said the more aprons the contractor does, the better the price as there is a savings on the mobilization charge. If they can do them all with one or two trips.

Council then discussed the need to repair West Railroad Avenue at south end. TA explained the owner of Railroad Avenue Storage has opened another gate in the back of property to allow dump truck drivers to use Pine Street since condition of West Railroad Avenue is so bad.

They then went over other sites with damaged pavement:
Blanche Street from cutting corners;
Kelly Lane from swinging wide;
Benjamin Road – the edges are bad – build the shoulders up, use cold patch.

First Lane is off Riverview Drive in the Riverview Subdivision. There are several places that the oak trees are busting the roads up. What do they do? Destroy the trees or paint them and use them as a speed bump.

CM Vail explained the growth inhibitor method FPL used on oak trees in front of his business. That may postpone it for a longer period. CM Ball said an arborist would have to make the decision. If an arborist says the root can be cut, maybe something can be done.

PW Director Tom said the one on Oak Tree Place they had an arborist came out. Taking the root out could weaken out - TA said the latest is the HOA agrees that that one should come out. There are several others in Brook Hollow. Oak Tree Place is the worst one.

Find out about growth inhibitor. CM Vail knows an Asplundh guy and will ask him about the growth inhibitor. TA said there is a variety of solutions we could go with.

Washout on Rocky Point Road is in permitting and then TA will finalize bids and get in front of Council.

At Fern Creek a headwall that has fallen in – was hit by a car and got knocked in. Another on Hall and Corey right where new pavement is. We changed the slope of how the water runs off that.

Mayor said just south of there is a new driveway – TA said it is a separate issue. CM White said he had asked Engineer Morris Smith about it. Morris explained that section, the east side of Corey runs southbound until it gets to the cross pipe and then runs northbound. Need to enforce our codes.

CM White asked about road material. He said last year the previous TA said they needed 17K in material costs to get Matthews back to where it was when first accepted.

TA agreed with the suggestion of doing the prep work but the money we are spending to bring it up to date. They have only spent about 15K in road material so far this year. CM Ball mentioned his request to budget the replacement costs in the annual budget, so the money will be there when the road needs capping.

CM Korn asked how many other roads have the kind of road base that CM Vail was required to build to on Smith Lane. CM Vail said Matthews Lane has a good base for paving and the material they put on it looks good. How many other similar roads do we need to repair.

CM Korn asked for list of roads not accepted. TA explained the future workshop to discuss these unaccepted roads.

Clerk Franklin explained the separate workshop for undersized roads was requested by Town Attorney. He explained he would need to review about ten years of case law on this subject and then he will be ready for this workshop to be scheduled.

Council looked at the catch basin and paving for the cul-d-sac that needs paving.

CM Vail said in perspective – repairing the edges of the road. Fine line between holding water and shedding water. You don't want it to hold water. He applauds PW Dir Tom for dealing with this. He asked Post Master to require the mailboxes to the edge of the pavement, so he doesn't have to go off road. Is there a standard? Yes, 22 inches from top of road to bottom of mailbox. Find out what the requirements are for mailboxes to edge of road.

Mayor asked if TA needed a priority on this. TA said if Council wants to then sure. Mayor said the aprons would be a priority.

TA said the dirt roads is what he wants to focus on. Last few months the focus was on getting the ditches done before the rain. Now can buy the road material. Then do the paving. Don't have enough money to do all the aprons this year. If there are priorities to do with this budget. Can't do them all this year. If there are six on them. CM White wants to focus on getting the road material. Look at the aprons during the budget workshops. CM Vail said to get estimates from contractors.

Mayor said regarding the dirt roads, prioritize the work based on the most people on a street. Mayor ask the distance of these roads. TA has that information. CM Vail said as far as priorities, they should do damage prevention before more expensive repair is needed. Edge of the road repairs. Fix now to save money later. CM Vail talked about the auger and chute to dispense again to fix edge of roads.

CM White said he got a call from Jeff Darby. What was the agenda for the workshop. It was only posted at 1:40PM.

CM White asked about drainage issue – culvert under Raulerson – when can it be attacked? TA is working on the May schedule and will address that.

CM White also asked about removing trees from ditches. There is a big pine tree and two palm trees. Would have to get FPL contractor to take out. Weber west side lots of trees. CM White also commented on what a resident recently told him about how positive he feels on how the Town is going in a positive way; he had nothing but good things to say.

CM Rivet wanted to continue the next step in the drainage projects. What can we do through the rest of the year. CM Korn talked about the poles on Atz – FPL will need 8 weeks and then Spectrum and ATT to move their data lines. CM Vail said the workshops are very productive as you can't get the back and forth at a council meeting that you can at a workshop. The workshops are important. Would like to have them every two months. CM Vail asked PW Dir Tom if there was anything else he wanted to improve his department. TA said another item that would be very helpful would be a 2nd dump truck.

D. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 8PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

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

Date Approved: 5/6/2019



AGENDA REQUEST 2

**AGENDA ITEM REQUEST FORM
MALABAR TOWN COUNCIL**

Please mail completed form to:

Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

NAME: Lloyd Behrendt
ADDRESS: 1085 Hall Road
TELEPHONE: 321.432.6388
(Home) (Business)

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

would like to propose we declare Sandhill Cranes a Malabar Protected species, give them the R/W on ALL roads within our borders, and make it a misdemeanor to kill one.

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

Recently had two hit and killed on Malabar Road. they are not stupid, they actually act as crossing guards for their family. and I also shot pics of one of my dear sandhill friend's chicks choke to death, have no proof but have heard for years, a neighbor puts out seed corn when chicks arrive. against state law to tamper with them, including feeding them.

Please state desired action by Town Council.

direct Town Attorney to draft an ordinance protecting Sandhills in our town boundaries. 35 years ago I knew of two nests. now they are ubiquitous. Malabar has become a Sandhill haven, have watched my pals fledge around a dozen in 10 years...

Signed: _____

Date: 4 27 2019

EXHIBIT "A"

RTCM Date: 5/6/19

AGENDA ITEM REQUEST FORM
MALABAR TOWN COUNCIL

Please submit the completed form to the Clerk's Office:

AGENDA REQUEST 3

Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

NAME: Henry Morin

ADDRESS: AGENT FOR PROPERTY OWNER

TELEPHONE: 321-725-9234
(Home) (Business)

Please state the item you wish to have placed on the Town Council Agenda: Agenda Request
Forms are not permitted for campaign purposes.

1.5 AC parcel at NE corner of Babcock + Osage Rd.
would like to proceed with land use & zoning
change to C-2 as it was in the 1980's

Please summarize pertinent information concerning your request Agenda item and attach applicable documents:

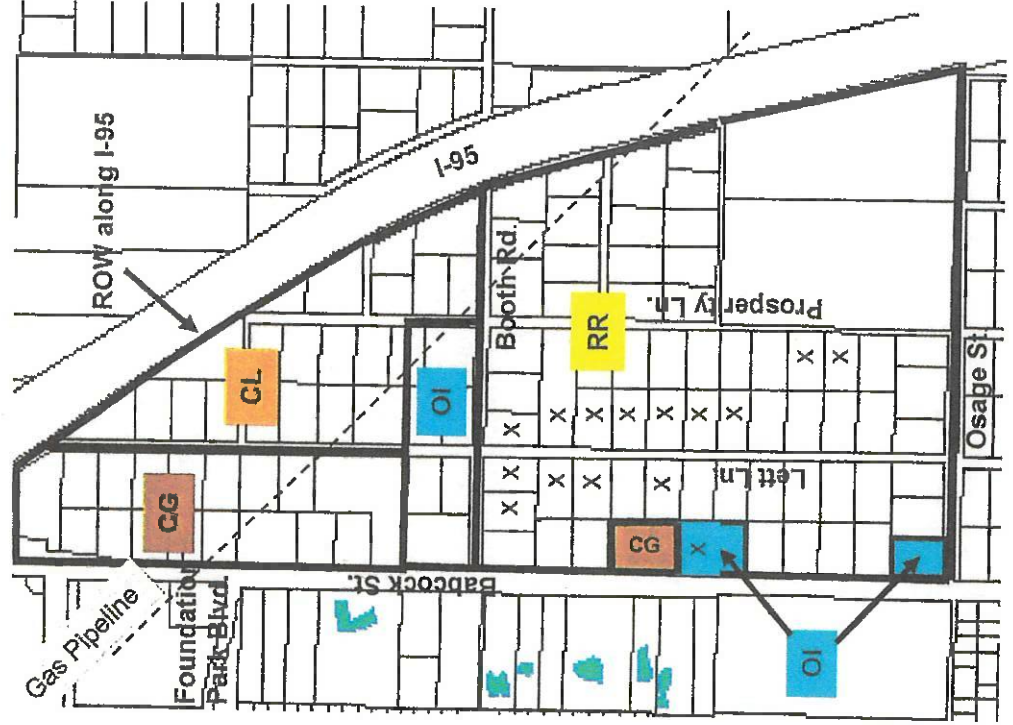
Please state desired action by Town Council :

Signed: _____

Date: _____

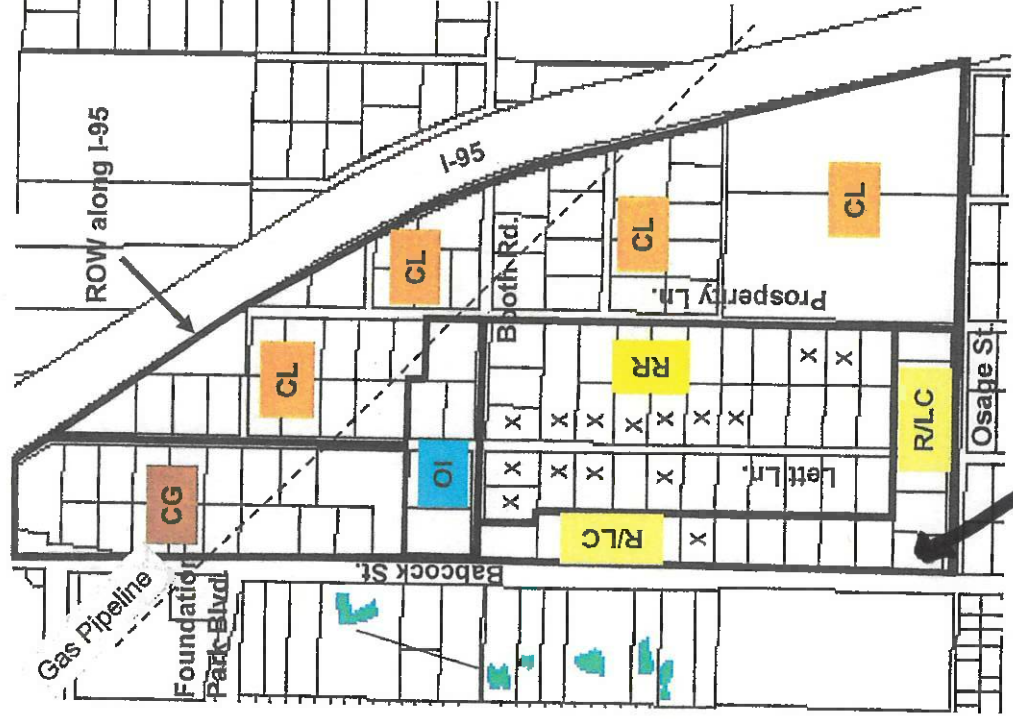
Land Use Along Babcock Street

Present Land Use



X = Homes

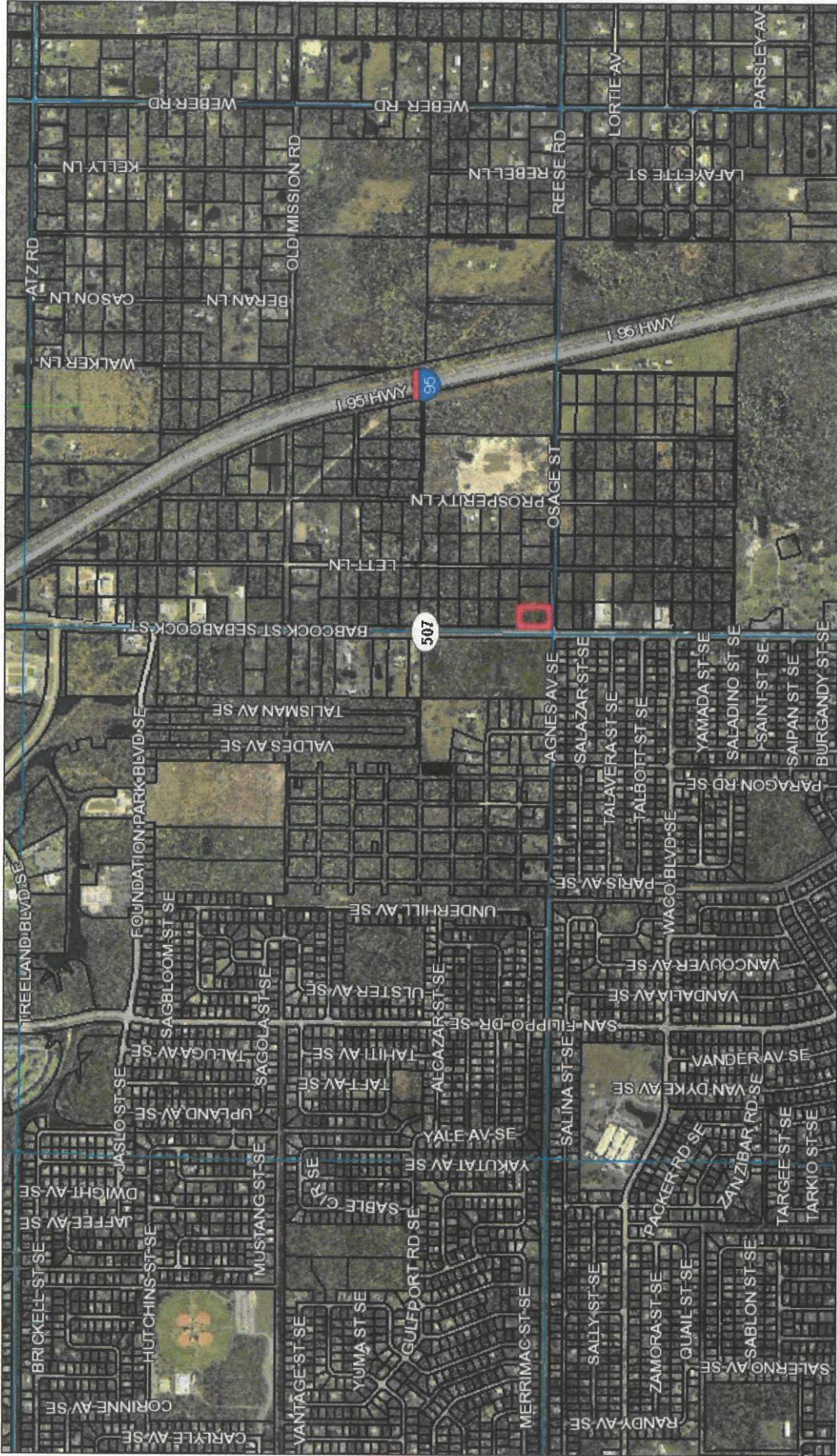
Proposed Land Use



October 1, 2018

CG

Brevard County Property Appraiser



April 26, 2019

**1.5 acre (gross lot size) at NE Corner of Babcock St & Osage St
Representative/Agent for Property Owner: Mr. Henry Morin**

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



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account	2931433
Owners	Phaneesh Sai LLC
Mailing Address	114 Lansing Island Dr Indian Harbour Beach FL 32937
Site Address	Not Assigned
Parcel ID	29-37-10-00-568
Property Use	1000 - Vacant Commercial Land
Exemptions	None
Taxing District	34Z0 - Malabar
Total Acres	1.35
Subdivision	--
Site Code	0320 - Babcock
Plat Book/Page	--
Land Description	W 250 Ft Of S 1/4 Of Lot 8 Of Pb 1 Pg 165 Ex S 35 Ft And W 50 Ft Aka Tract 235

VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$73,460	\$66,490	\$66,490
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$69,930	\$63,580	\$57,800
Assessed Value School	\$73,460	\$66,490	\$66,490
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$69,930	\$63,580	\$57,800
Taxable Value School	\$73,460	\$66,490	\$66,490

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
08/15/2018	\$125,000	WD	Vacant	8243/0134
11/23/2016	--	DC	Improved	7949/0718
04/23/2014	--	QC	Vacant	7113/0686
06/23/2004	--	QC	Vacant	5332/5212
12/11/2003	--	WD	Vacant	5180/2181
02/01/1996	--	QC	Vacant	3549/0368
05/03/1986	--	QC	--	2702/2548
07/09/1985	--	QC	--	2617/1062
05/29/1984	\$30,000	WD	--	2519/0068

No Data Found

**TOWN OF MALABAR
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4
Meeting Date: May 06, 2019**

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

SUBJECT: Adopt Reso 06-2019 Fertilizer Signage at Vendor Locations

BACKGROUND/HISTORY:

Malabar banned the use of fertilizer containing nitrogen and phosphorus in 2014 during rainy season of June 1 through September 30.

Brevard County intends to require any vendor selling fertilizers to post a sign alerting the consumer to the ban.

ATTACHMENTS:

Reso 06-2019

Memo from Clerk with draft Brevard County Ordinance

Malabar Ord 2014-04 and Ord 2014-13

ACTION OPTIONS:

Adopt Reso 06-2019

RESOLUTION 06-2019

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING BREVARD COUNTY'S ORDINANCE TO REQUIRE THE POSTING OF SIGNAGE BY VENDORS SELLING FERTILIZER BETWEEN JUNE AND SEPTEMBER TO ALERT CONSUMERS TO THE IMPORTANCE OF REDUCING THE TOTAL MAXIMUM DAILY LOAD OF POLLUTANTS IN THE INDIAN RIVER LAGOON AND ON THE BAN OF THE USE FERTILIZERS CONTAINING NITROGEN AND PHOSPHORUS DURING THE MONTHS OF JUNE THROUGH SEPTEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Malabar Town Council has been notified that Brevard County intends to adopt an ordinance requiring the posting of signage by vendors selling fertilizer that will inform customers of the ban on the use of fertilizers containing nitrogen and phosphorus during the rainy season of June through September; and

WHEREAS, Malabar Town Council desires to support this action.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

Section 1. The Town Council of Malabar, Brevard County, Florida, has previously adopted an ordinance banning use of such fertilizers during the rainy season of June through September and supports the adoption of an ordinance by the Brevard County Board of County Commissioners requiring the posting of signage by vendors selling fertilizer that will inform customers of the ban on the use of fertilizers containing nitrogen and phosphorus during the rainy season of June through September.

Section 2. The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the Town Clerk to send a copy of this resolution to the Brevard County Board of County Commissioners.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 4. This resolution shall take effect immediately upon adoption.

This Resolution was moved for adoption by Council Member _____. This motion was seconded by Council Member _____ and, upon being put to vote, the vote was as follows:

Council Member Grant Ball	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member Dick Korn	_____
Council Member Danny White	_____

This Resolution was then declared to be duly passed and adopted this 6th day of May, 2019.

TOWN OF MALABAR

By: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

(seal)

TOWN OF MALABAR

MEMORANDUM

Date: April 16, 2019 2019-TC/T-027

To: Honorable Mayor and Town Council
Town Administrator Matt Stinnett
Denine Sherear, Secretary for Planning & Zoning Board

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

Ref: Amendment to Fertilizer Ordinance by Brevard County

The attached material is for your information as it furthers the efforts to reduce pollutants into the Indian River Lagoon. The County is proposing new regulations that will require the posting of signage at retailers to alert consumers that between June 1 and September 30 of each year the use of fertilizers containing nitrogen and phosphorus are governed by each city. Like most other Brevard cities, Malabar bans the use of these fertilizers during the summer.

The County Commission intends to discuss this ordinance at their meeting on April 23 with final approval at the May 7, 2019 meeting. Once approved, the notices will be required countywide.

Malabar Council adopted restrictions on the use of such fertilizers in 2014 and has provided that information on our website, in newsletters and to HOA groups.

The May 6, 2019 RTCM agenda will have an item asking for Council support of this action by Brevard County.

Thank you.

Attachments:
Brevard County draft ordinance
Malabar Ord 2014-04 and Ord 2014-13

ORDINANCE 2019 - _____

AN ORDINANCE OF BREVARD COUNTY, FLORIDA AMENDING CHAPTER 46, ENVIRONMENT, ARTICLE VIII, FERTILIZER USE ON URBAN LANDSCAPE; SPECIFICALLY AMENDING SECTION 46-337 APPLICABILITY TO REQUIRE THAT FERTILIZER RETAILERS POST A NOTICE TO CONSUMERS ABOUT THE LIMITATIONS OF FERTILIZER USE; PROVIDING FOR COUNTYWIDE APPLICATION; PROVIDING FOR RESOLUTION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AREA ENCOMPASSED AND AN EFFECTIVE DATE.

WHEREAS, Section 403.9337, F.S. requires a county or municipal government located within the watershed of a water body or water segment that is listed by the Florida Department of Environmental Protection as impaired to adopt at a minimum the model ordinance "Florida Friendly Fertilizer Use on Urban Landscapes"; and

WHEREAS, since 2007, pursuant to Section 403.067, F.S., the Florida Department of Environmental Protection has included the Indian River Lagoon in Brevard County on the Verified List of Impair Waters and has established pollutant load limits in the form of Total Maximum Daily Loads (TMDLs) which require the County and municipalities to reduce pollutant loads discharged from their stormwater systems and;

WHEREAS, the Florida Department of Environmental Protection provides pollutant load reduction credit to the County and municipalities toward meeting mandated Total Maximum Daily Load Program Reductions for adoption and enforcement of code provisions directed at reducing such loadings from the use of fertilizer; and

WHEREAS, the Board of County Commissioners previously adopted Fertilizer Use on Landscapes Ordinance 2012-37 which bans the use of fertilizer containing nitrogen and phosphorus during the rainy season, from June 1st through September 30th; and

WHEREAS, Ordinance 2012-37 also ~~which~~ bans the use of fertilizer

containing phosphorus year-round unless a deficiency is verified ... and outside of the rainy season requires nitrogen to contain at least 50% slow release; and...

WHEREAS, the Save Our Indian River Lagoon Plan prioritizes the reduction of excess nutrients in the Lagoon from multiple sources, including fertilizer; and

WHEREAS, the Board finds that a countywide ordinance amendment which requires retailers to post a notification to consumers of the local fertilizer ordinance requirements will improve voluntary compliance, reduce pollutant runoff into Brevard County waterways and serve the public, safety, health and welfare of its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA that:

SECTION 1. Section 46-337. Applicability. Code of Ordinances of Brevard County, Florida is hereby amended to read:

Sec. 46-337. Applicability and notice to consumers.

(a) With the exception of subsection (b) below, This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the unincorporated areas of Brevard County, unless such applicator is specifically exempted by the terms of this Ordinance from the regulatory provisions of this Ordinance. This Ordinance shall be prospective only, and shall not impair any existing contracts.

(b) Any business that sells fertilizer shall post a notice to consumers provided by the county stating that the use of lawn and landscape fertilizers everywhere in Brevard County is restricted by city or county fertilizer ordinances.

Signs shall be posted at eye level attached to the shelving that holds lawn and landscape fertilizer. This notification requirement shall be applicable countywide throughout all of Brevard County, except in municipalities which have adopted an ordinance that directly conflicts with this notification subsection.

SECTION 2. 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. In the event of a direct conflict between this Ordinance and a municipal ordinance, the municipal ordinance shall prevail. Brevard County Charter, Section 1.7.

SECTION 3. 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 4. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered 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 5. Area encompassed. This Ordinance amendment creating Section 46-337(b) shall take effect COUNTYWIDE, within the municipal and unincorporated areas of Brevard County, Florida.

SECTION 6. Effective date. A certified copy of this Ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law. For retail establishments, signs must be posted within 14 calendar days of receipt of the signs provided by the county.

DONE, ORDERED AND ADOPTED in Regular Session, this _____ day of _____, 2019.

ORDINANCE 2014-04

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; ADDING NEW ARTICLE III TO CHAPTER 7.5 OF THE CODE OF ORDINANCES OF THE TOWN RELATING TO THE REGULATION OF THE USE OF FERTILIZERS; PROVIDING FOR A SHORT TITLE, PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE REGULATION OF FERTILIZER USE AND APPLICATION; PROVIDING FOR EXEMPTIONS, TRAINING AND LICENSES; PROVIDING FOR PENALTIES; PROVIDING FOR APPEALS; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, REPEAL AND AN EFFECTIVE DATE.

WHEREAS, Impairment to the Town's surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within the boundaries of the Town has a direct impact on the health, safety and welfare of the general public; and,

WHEREAS, the Town Council has determined that the use of fertilizers on lands within the Town creates a risk to contributing to adverse effects on surface and/or ground water; and,

WHEREAS, Section 403.9337 of the Florida Statutes provides for the adoption of an ordinance relating "Florida-Friendly Fertilizer Use on Urban Landscapes"; and,

WHEREAS, the Town Council finds that management measures contained in the most recent edition of the "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," are required by this ordinance.

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

SECTION 1. A new Article III is hereby added to section 7.5 of the Code of Ordinances of the Town which shall read as follows:

"Art. III. Fertilizer Use and Application

Sec. 7.5-40. SHORT TITLE AND PURPOSE AND INTENT

These regulations shall be known as the "Town of Malabar Fertilizer Use and Application Code". These regulations regulate the proper use of fertilizers by any applicator; requires proper training of Commercial and Institutional Fertilizer Applicators; establishes training and licensing requirements; establishes a Prohibited Application Period; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. These regulations require the use of Best Management Practices which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. These secondary and cumulative effects have been observed in and on the Town's natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of the Town residents and the health of the public. Overgrowth of algae and vegetation hinder the

effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

Sec. 7.5-41. DEFINITIONS

"Administrator" means the Town Administrator of the Town of Malabar, or an administrative official of the Town designated by the Town Administrator to administer and enforce the provisions of these regulations.

"Application" or "Apply" means the actual physical deposit of fertilizer to turf or landscape plants.

"Applicator" means any Person who applies fertilizer on turf and/or landscape plants in the Town.

"Best Management Practices" means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

"Board or Governing Board" means the Town Council of the Town.

"Code Enforcement Officer, Official, or Inspector" means any designated employee or agent of the Town whose duty it is to enforce codes and ordinances enacted by the Town.

"Commercial Fertilizer Applicator", except as provided in 482.1562(9) F.S., means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

"Fertilize," "Fertilizing" or "Fertilization" means the act of applying fertilizer to turf, specialized turf, or landscape plants.

"Fertilizer" means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.

"Guaranteed Analysis" means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

"Institutional Applicator" means any person, other than a private, non-commercial or a Commercial Applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include, but shall not be limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

"Landscape Plant" means any native or exotic tree, shrub, or groundcover (excluding turf).

"Low Maintenance Zone" means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

"Person" means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

"Prohibited application period" means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of Brevard County, issued by the National Weather Service, or if heavy rain is likely.

"Restricted application period" means June 1 to September 30.

"Saturated soil" means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of these regulations, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

"Slow Release," "Controlled Release," "Timed Release," "Slowly Available," or "Water Insoluble Nitrogen" means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.

"Surface waters" as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) means waters on the surface of the earth, contained in bounds created naturally or artificially, including , the Atlantic Ocean, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, canals, and ditches.

"Town" shall mean the Town of Malabar.

"Turf," "Sod," or "Lawn" means a piece of grass-covered soil held together by the roots of the grass.

"World Meteorological Organization definition of heavy rain": Rainfall greater than or equal to 50 mm (2 inches) in a 24 hour period.

"Urban landscape" means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in s. 570.02.

Sec. 7.5-42. APPLICABILITY These regulations shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of the Town, unless such applicator is specifically exempted by the terms of these regulations. These regulations shall be prospective only, and shall not impair any existing contracts.

Sec. 7.5-43. TIMING OF FERTILIZER APPLICATION

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period, Restricted Application Period, or to saturated soils.

Sec. 7.5-44. FERTILIZER FREE ZONES

Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall. Newly planted turf and/or landscape plants may be fertilized in this Zone only for a sixty (60) day period beginning 30 days after planting if needed to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

Sec. 7.5-45. LOW MAINTENANCE ZONE.

A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any surface waters, pond, stream, watercourse, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. No mowed or cut vegetative material should be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone.

Sec. 7.5-46. FERTILIZER CONTENT AND APPLICATION RATES

No fertilizer containing phosphorous shall be applied to turf or landscape plants in the Town of Malabar unless a soil or plant tissue deficiency is verified by a University of Florida, Institute of Food and Agriculture Sciences, approved testing methodology. In the case that a deficiency has been verified, the application of a fertilizer containing phosphorous shall be in accordance with the rates and directions provided by Rule 5E-1.003(2), Florida Administrative Code. Deficiency verification shall be no more than 2 years old. However, recent application of compost, manure, or top soil shall warrant more recent testing to verify current deficiencies.

The nitrogen content of fertilizer applied to turf or landscape plants within Malabar shall contain at least 50% slow release nitrogen per guaranteed analysis label.

Fertilizers applied to turf within Malabar shall be applied at rates that are in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.

Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first 30 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.

Sec. 7.5-47. APPLICATION PRACTICES

a. Spreader deflector shields are required when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.

- b. Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.
- c. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.
- d. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.
- e. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

Sec. 7.5-48. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

Sec. 7.5-49. EXEMPTIONS

The provisions set forth above in this Ordinance shall not apply to:

- ✓ a. bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14 Florida Statutes;
- ✓ b. other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;
- ✓ c. any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.
- ✓ d. athletic fields at Town of Malabar public parks that apply the concepts and principles embodied in the Florida Green BMPs, while maintaining the health and function of the specialized turf areas.

Sec. 7.5-50. TRAINING

All commercial and institutional applicators of fertilizer within the incorporated and unincorporated area of Brevard County, shall abide by and successfully complete the six-hour training program in the *"Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries"* offered by the Florida Department of Environmental Protection through the University of Florida Extension "Florida-Friendly Landscapes" program, or an approved equivalent.

Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida /FAS Florida Yards and Neighborhoods program when applying fertilizers.

Sec. 7.5-51. LICENSING OF COMMERCIAL / INSTITUTIONAL APPLICATORS

All commercial applicators of fertilizer within the incorporated area of the Town, shall abide by and have successfully completed training and continuing education requirements in the *"Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries"*, offered by the Florida Department of Environmental Protection through the University of Florida / FAS "Florida- friendly Landscapes" program, or an approved equivalent program, prior to obtaining a business tax receipt for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial fertilizer applicators shall provide proof of

completion of the program to the Town and Brevard County's Tax Collector's office upon application or renewal of business tax receipt.

All commercial applicators of fertilizer within the incorporated area of Malabar, shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a commercial fertilizer applicator pursuant to Rule 5E- 14.117(18), Florida Administrative Code.

Institutional Applicators who apply fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certificate prior to the business owner obtaining a business tax receipt. Owners for any category of occupation which may apply any fertilizer to turf and/or landscape plants shall provide proof of completion of the program to the Town and Brevard County's Tax Collector's Office.

Sec. 7.5-52. PENALTIES AND ENFORCEMENT

The provisions of this section may also be enforceable by proceedings before the Malabar Special Magistrate, or by suit for prohibitory or mandatory injunctive relief, or by any other lawful remedy existing at law or in equity for the enforcement of municipal ordinances. Funds generated by penalties imposed under this section shall be used by the Town for the administration and enforcement of Section 403.9337, F.S., and the corresponding sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.

Sec. 7.5-53. APPEALS

Appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this Division shall be filed in writing within 30 calendar days after the decision is rendered by the Administrator. Requests for appeals will be considered by the Town Administrator. Any appeal of the decision of the Special Magistrate shall be pursuant to chapter 162 of the Florida Statutes."

SECTION 2. CONFLICTS AND RELATIONSHIP TO OTHER LAWS

Whenever regulations or restrictions imposed by this ordinance conflict with other ordinances or regulations, or are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule or regulation, the regulations, rules or restrictions which are more restrictive or which impose the highest standards or requirements shall govern.

SECTION 3. SEVERABILITY

This ordinance and the various parts, sections, subsections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection, section, or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of the ordinance shall not be affected thereby. If any part, sentence, paragraph, subsection, section or clause be adjudged unconstitutional or invalid as applied to a particular property, building, or other structure, it is hereby provided that the application of such portion of the ordinance to other property, buildings, or structures shall not be affected thereby.

SECTION 4. CODIFICATION, SCRIVENERS ERRORS

The provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town. Sections of the ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "chapter", "article," or such other appropriate word or phrase in order to accomplish such intentions. Sections of this ordinance may require the correction of typographical errors which do not affect the intent. Such corrections may be authorized without need of a Public Hearing, by filing a corrected or recodified copy of same with the clerk of the Town.

SECTION 5. REPEAL

All ordinances, or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect immediately upon its adoption.

This ordinance was moved for adoption by Council Member Acquaviva and was seconded by Council Member Abare and, upon being put to a vote, the vote was as follows:

Council Member Jim Milucky Aye
Council Member Wayne Abare Aye
Council Member Steven (Steve) Rivet Aye
Council Member Dick Korn Aye
Council Member Marisa Acquaviva Aye

This ordinance was then declared duly passed and adopted this 7th day of April, 2014.

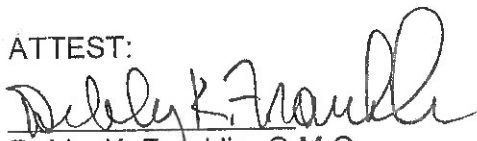
(seal)

TOWN OF MALABAR

By: 

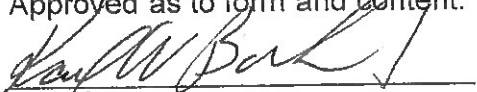
Steve Rivet, Council Chair

ATTEST:



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

Approved as to form and content:



Karl W. Bohne, Jr., Town Attorney

ORDINANCE 2014-13

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ORDINANCE 2014-04 ADDING AN ADDITIONAL EXEMPTION TO THE REGULATIONS PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, REPEAL AND AN EFFECTIVE DATE.

WHEREAS, Malabar Town Council recently adopted regulations governing the use of fertilizers in an attempt to reduce pollutants into the Indian River Lagoon and have since discussed and determined that an additional exemption is needed for home grown fruit and vegetable gardens on private property grown solely for the property owners personal consumption.

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

SECTION 1. A new exemption is hereby added to Chapter 7.5, Article III, Section 7.5-49 of the Code of Ordinances of the Town which shall read as follows:

"Art. III. Fertilizer Use and Application

• • • • •

Sec. 7.5-49. EXEMPTIONS

The provisions set forth above in this Ordinance shall not apply to:

- a. bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14 Florida Statutes;
- b. other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;
- c. any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.
- d. athletic fields at Town of Malabar public parks that apply the concepts and principles embodied in the Florida Green BMPs, while maintaining the health and function of the specialized turf areas.
- e. Fruit and vegetable gardens on private property grown solely for the property owners personal consumption.

SECTION 2. CONFLICTS AND RELATIONSHIP TO OTHER LAWS

Whenever regulations or restrictions imposed by this ordinance conflict with other ordinances or regulations, or are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule or regulation, the regulations, rules or restrictions which are more restrictive or which impose the highest standards or requirements shall govern.

SECTION 3. CODIFICATION

The provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town. Sections of the ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "chapter", "article," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 4. REPEAL

All ordinances, or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 5. EFFECTIVE DATE.

This ordinance shall take effect five (5) days after adoption.

This ordinance was moved for adoption by Council Member Acquaviva and was seconded by Council Member Abare and, upon being put to a vote, the vote was as follows:

Council Member Jim lucky	<u>Aye</u>
Council Member Wayne Abare	<u>Aye</u>
Council Member Steven Steve) Rivet	<u>Aye</u>
Council Member Dick Kom	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Aye</u>

This ordinance was then declared duly passed and adopted this 8th day of September, 2014.

(seal)

TOWN OF MALABAR

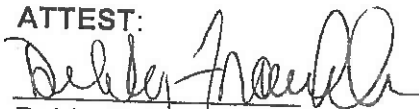
By: 

Steve Rivet, Council Chair

1st Reading: 07/21/2014 (vote 4 to 0 for 1st reading)

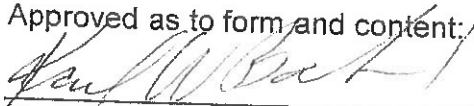
2nd Reading: 09/08/2014

ATTEST:



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

Approved as to form and content:



Karl W. Bohne, Jr., Town Attorney

Brandon Smith
Environmental Specialist

Save Our Indian River Lagoon Program
Brevard County Natural Resources Mgmt. Dept.
2725 Judge Fran Jamieson Way, Bldg. A-219
Viera, FL 32940
321-633-2016 Ext. 52446

Visit us on the web: www.brevardfl.gov/SaveOurLagoon

Follow us on Social Media:    YouTube

Please take a moment and let me know how I am doing, by taking our customer service survey
<https://www.brevardfl.gov/Feedback>

The comments and opinions expressed herein are those of the author of this message and may not reflect the policies of the Brevard County Board of Commissioners.



Please consider the environment before printing this e-mail.

From: Smith, Brandon S

Sent: Monday, April 15, 2019 5:21 PM

To: Brenda Fettrow <bfettrow@cityofrockledge.org>; Christopher Chinault (cchinault@indialantic.com) <cchinault@indialantic.com>; Courtney Barker <cbarker@satellitebeach.org>; David Green <d.greene@cityofcapecanaveral.org>; Elizabeth Mascaro <townmanager@melbournebeachfl.org>; Gayle Griswold <Town@MelbourneVillage.ORG>; James McKnight <james.mcknight@cityofcocoabeach.com>; Jason Mahaney <TownAdmin@grantvalkaria.org>; John Titkanich <jtitkanich@coco afl.org>; Lisa Morrell <citymanager@pbfl.org>; Mark Ryan <mryan@indianharbour.org>; Matt Stinnett <mstinnett@townofmalabar.org>; Patricia Burke <townhall@townofpalmshores.org>; Scott Larese <virginia.blaylock@titusville.com>; Scott Morgan <smorgan@westmelbourne.org>; Shannon Lewis <City.Manager@mlbfl.org>

Cc: Eddy.galindo@titusville.com; Ed Wegerif (ewegerif@coco afl.org) <ewegerif@coco afl.org>; townclerk@townofmalabar.org; Dani Straub <dani.straub@mlbfl.org>; Joanie Regan <jregan@cityofcocoabeach.com>; Keith Mills <kmills@westmelbourne.org>; julie.dimmig@palmbayflorida.org; Nicholas Sanzone <nsanzone@satellitebeach.org>; Alvarez, Carolina <Carolina.Alvarez@brevardfl.gov>; Barker, Virginia H <Virginia.Barker@brevardfl.gov>

Subject: Proposed Amendment to County Fertilizer Ordinance

Dear City Managers, City Clerks, and Stormwater Partners,
Brevard County is proposing an amendment to their Fertilizer Ordinance. If passed, the amendment will require all retail locations to post a notice regarding fertilizing restrictions in areas where fertilizer is sold. The signs for this notice will be provided by the county. This ordinance will be applicable Countywide. I have attached the proposed amendment language for your information. We will be asking for Legislative Intent at the April 23, BOCC Meeting and final approval at the May 7, BOCC Meeting. Should you have any questions or comments feel free to contact me or Carolina Alvarez, Carolina.Alvarez@brevardfl.gov.

Thank you,

Brandon Smith
Environmental Specialist

Re: Proposed Amendment to County Fertilizer Ordinance

Pat Reilly

Wed 4/17/2019 11:37 AM

To: Debby Franklin <townclerk@townofmalabar.org>;

Debby,

We can put this on the next agenda and get council to vote on it. I'm OK with this amendment.

Pat

From: Debby Franklin
Sent: Wednesday, April 17, 2019 9:31 AM
To: Pat Reilly
Subject: Fw: Proposed Amendment to County Fertilizer Ordinance

Do you want to do a resolution in support of this?

Debby K. Franklin
Certified Municipal Clerk
Town Clerk Treasurer
townclerk@townofmalabar.org



Town of Malabar
2725 Malabar Road
Malabar, FL 32950
www.TownofMalabar.com

From: Smith, Brandon S <Brandon.Smith@brevardfl.gov>
Sent: Wednesday, April 17, 2019 9:20 AM
To: Brenda Fettrow; Christopher Chinault (cchinault@indialantic.com); Courtney Barker; David Green; Elizabeth Mascaro; Gayle Griswold; James McKnight; Jason Mahaney; John Titkanich; Lisa Morrell; Mark Ryan; Matt Stinnett; Patricia Burke; Scott Larese; Scott Morgan; Shannon Lewis
Cc: Eddy.galindo@titusville.com; Ed Wegerif (ewegerif@cocoafll.org); Debby Franklin; Dani Straub; Joanie Regan; Keith Mills; julie.dimmig@palmbayflorida.org; Nicholas Sanzone; Alvarez, Carolina; Barker, Virginia H
Subject: RE: Proposed Amendment to County Fertilizer Ordinance

Apologies I attached the existing ordinance and not the one with the suggested amendments. Here is the one with the amendments.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 5
Meeting Date: May 06, 2019

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

SUBJECT: Approve Resolution 07-2019 Amending Administrative Fees

BACKGROUND/HISTORY:

Attached is a resolution showing two new administrative fees the staff recommend Council approves.

Naming and renaming a street requires administrative time of the Administrative Assistant of the Building Official. It also requires a recording fee and additional staff time to update and change the accepted streets list. Adding a application fee of \$50.00 will correctly put the cost on the applicant rather than all of the taxpayers.

When unusual requests come to staff and we are unable to give direction because it is not covered by the code, we must defer to Council for direction. Some of these recent requests, such as the McCain Lane, Linrose Lane and now the Old Mission ROW use are not covered by the Administrative Fee resolution. Staff is recommending an application fee for such requests when they need to go before council to pay \$330.00 to cover the costs of town staff research and attorney review before the issue goes before Council.

ATTACHMENTS:

Resolution 07-2019

ACTION OPTIONS:

Approve Reso 07-2019.

RESOLUTION 07-2019

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO THE AMENDMENT OF ADMINISTRATIVE AND PERMIT FEES REQUIRED TO BE ESTABLISHED BY VARIOUS ORDINANCES OF THE TOWN OF MALABAR; PROVIDING FOR AN APPLICATION FEE TO NAME A NEW STREET OR RENAMING AN EXISTING STREET; PROVIDING FOR AN APPLICATION FEE WHEN REQUESTING A LAND USE DECISIONS AND/OR ACTION NOT OTHERWISE COVERED BY THE ADMINISTRATIVE FEE SCHEDULE WITH REGARDS TO LAND DEVELOPMENT MATTERS ; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Malabar's Code of Ordinances requires assessment of various administrative and permit fees; and

WHEREAS, the Town of Malabar's Ordinances and Land Development Code require that the Town Council for the Town of Malabar impose said administrative fees; and

WHEREAS, the Town Council of the Town of Malabar has determined that a revision to the administrative fee schedule is appropriate to update fees to cover the actual costs of professional review, administrative time, legal advertising and mailing costs for notices.

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

SECTION 1. ADMINISTRATIVE FEES. The Town of Malabar does hereby revise administrative fees in accordance with the Town of Malabar's Code of Ordinance and Land Development Code to more accurately reflect the actual costs in 2019.

A.

Planned Unit Development (PUD) review:	\$900.00 plus \$40.00 per acre
Planned Unit Development (PUD) final:	\$900.00 plus \$40.00 per acre
Site Plan Pre-Application Conference (mandatory): except SFR	\$500.00
Site Plan Review:	\$900.00 for 1 st acre plus \$50 for each additional acre or portion of acre
Subdivision S/D or Commercial Development Pre-ap Conference (mandatory)	\$1,500.00
Preliminary Plat S/D Review:	\$1,500.00
Final Plat S/D Review:	\$1,200.00
Pre-Construction Conference for S/D or Commercial Development:	\$ 300.00
Variance Request to Board of Adjustment: Residential	\$800.00
Variance Request to Board of Adjustment: <u>Commercial</u>	\$1,750.00
Special Exception:	\$175.00 plus site plan review fee
Conditional Use Permit Application:	\$175.00 plus site plan review fee
Rezoning Request: Residential per additional acre or portion thereof.	\$625.00 for the first acre plus \$10.00
Rezoning Request: Commercial per additional acre or portion thereof.	\$1,500.00 for the first acre plus \$10.00
Future Land Use Map Designation Change:	\$300.00 plus the rezoning fee

Land clearing: \$100.00 for the first acre plus \$10.00 per additional acre or portion thereof

Residential lot fill permits \$ 100.00

Tree removal – Type IV Permit – dead, diseased or in fire buffer – no charge

Multiple Tree Removal: \$150.00 plus mitigation

Pond permit: Engineering costs only for ponds < ¼ acre; \$25.00 per 1000 sq. ft. of pond area for ponds over ¼ acre in size plus engineering costs.

Road Vacate and Abandonment request: \$425.00

Road Naming/Renaming Requests \$50.00

Request for Council Action on an Item not covered specifically provided for in the administrative fee schedule regarding matters of land development \$300.00

Written zoning verification or for the availability of town services. \$50.00

Development agreement: \$500.00

Culvert permit: \$100.00 plus actual engineering.

Contractor registration fee \$40.00

Dirt Road Construction Application:

Street Length up to 200 feet	\$800.00
Street Length up to 400 feet	\$825.00
Street Length up to 600 feet	\$890.00
Street Length up to 800 feet	\$930.00
Street Length up to 1000 feet	\$1010.00
Street Length up to 1200 feet	\$1080.00
Street Length up to 1400 feet	\$1120.00

Site Plan minor modification \$150.00

Golf Cart Registration – one-time fee and no renewal fee \$ 50.00

B. No permit, certificate, or other related document, and no inspections, public notice, or other action shall be instituted until such fees, costs, and charges have been paid. When in accordance with Town codes, a fee is paid, and registration submitted, there shall be no return or rebate of any funds so received, regardless of the Town's determination in the subject matter. All fees, costs, and charges shall be, upon collection, deposited in the appropriate fund of the Town.

SECTION 2. CONFLICTS. All resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this resolution.

SECTION 3. SEVERABILITY. In the event a court of competent jurisdiction shall hold or determine that any part of this resolution is invalid or unconstitutional, the remainder of the resolution shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have

enacted the remainder of this resolution without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon passage.

This Resolution was moved for adoption by Council Member _____ The motion was seconded by Council Member _____ and, upon being put to a vote; the vote was as follows:

- Council Member Grant Ball _____
- Council Member Brian Vail _____
- Council Member Steve Rivet _____
- Council Member Dick Korn _____
- Council Member Danny White _____

This Resolution was then declared to be duly passed and adopted this 6th day May 2019.

TOWN OF MALABAR

By:

ATTEST:

Mayor Patrick T. Reilly, Council Chair

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

(seal)

Approved as to Form and Content:

Karl W. Bohne, Jr.,
Town Attorney

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Meeting Date: May 6, 2019

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

SUBJECT: Proposed Depth of Six Parcels on the south side of Malabar Road for both R/LC and OI Land Use Designations on FLUM before final Adoption

BACKGROUND/HISTORY:

This was discussed at the April 1, 2019 RTCM and staff was directed to invite the property owners of the six parcels that are 1,320' deep. Notices were sent and they were invited to attend the May 6, 2019 meeting.

The property owners of two of the six 1,320' deep parcels on the south side of Malabar Road have asked Council to reconsider the 660' depth for the land use designations. They would ask that the entire parcel have the same land use designation. In addition, the attorney representing the Weber Woods LLC objects to the land use designation of "Office Institutional".

The P&Z Board had originally recommended the entire parcels be included in the land use designations on the south side of Malabar Road. The parcels under discussion are shown on the next page as lots 1, 2, 3, 4, 5 and 6.

Lots 1, 2 and 3 would have the OI land use designation, but only for the front 660', keeping RR for the rear portion. These lots at the west end of Town (lots 1, 2 and 3) have market values of \$580,000.00 to \$600,000.00 each.

Lot 4 is identified to be changed from RR to OI, but only for the front 660' of the parcel. It has a market value of \$338,000.00.

Lots 5 & 6 are identified to be changed from RR to R/LC but only for the front 660' of those parcels. Those parcels have a market value of \$140,000.00 to \$193,320.00.

Since the Comprehensive Plan Amendment was sent to the State, we have received written opposition from representatives of lots 4 and 5.

Staff is asking for Council decision on whether to maintain the split designations on these six lots or assign the land use designation to the entire parcel before completing the final FLUM for the May 20, 2019 meeting.

ATTACHMENTS:

- Aerial of the six lots under discussion.
- Map included in the Comprehensive Plan Amendment sent to the State showing how the designation would split the parcels.
- Letter from Ms. Hirsch
- Letter from Gray Robinson for the Weber Woods LLC property (lot 4)

ACTION OPTIONS:

Direction to staff



2725 Malabar Road
Malabar, FL 32950
321-727-7764 (Office) 321-727.9997 (Fax)
www.townofmalabar.org

April 10, 2019

Vincent Grimaldi
Anelia Grimaldi
1753 Shoreview Drive
Indialantic, FL 32903

RE: Parcel ID 29-37-02-00-251 - Land Use Map – Malabar Comprehensive Plan Amendment – Invitation to Attend Meeting

Dear Property Owners:

The Town Council of the Town of Malabar is in the process of updating its Comprehensive Plan using the periodic *Evaluation and Appraisal Reporting* (E.A.R.) process required by the Florida State's Smart Growth Act.

The Future Land Use Map designates the Town's intended future development plans for designated areas within the Town.

Your property is approximately 1,320 feet deep from Malabar Road south. Along Malabar Road, the Future Land Use Map currently shows Rural Residential (RR) Land Use Designation for the full 1,320' depth of the acreage owned by you. The Town's proposed amendment would change the land use designation for the front 660' to *Residential/Limited Commercial* (R/LC) and keep the 660' south of that as *Rural Residential* (RR) land use designation.

There are other owners of parcels on the south side of Malabar Road that are 1,320' deep and they have voiced opposition to the split land use designations. Malabar Town Council has directed me to contact the six property owners that have parcels that are 1,320 feet in depth on the south side of Malabar Road and ask for their input, prior to a final decision.

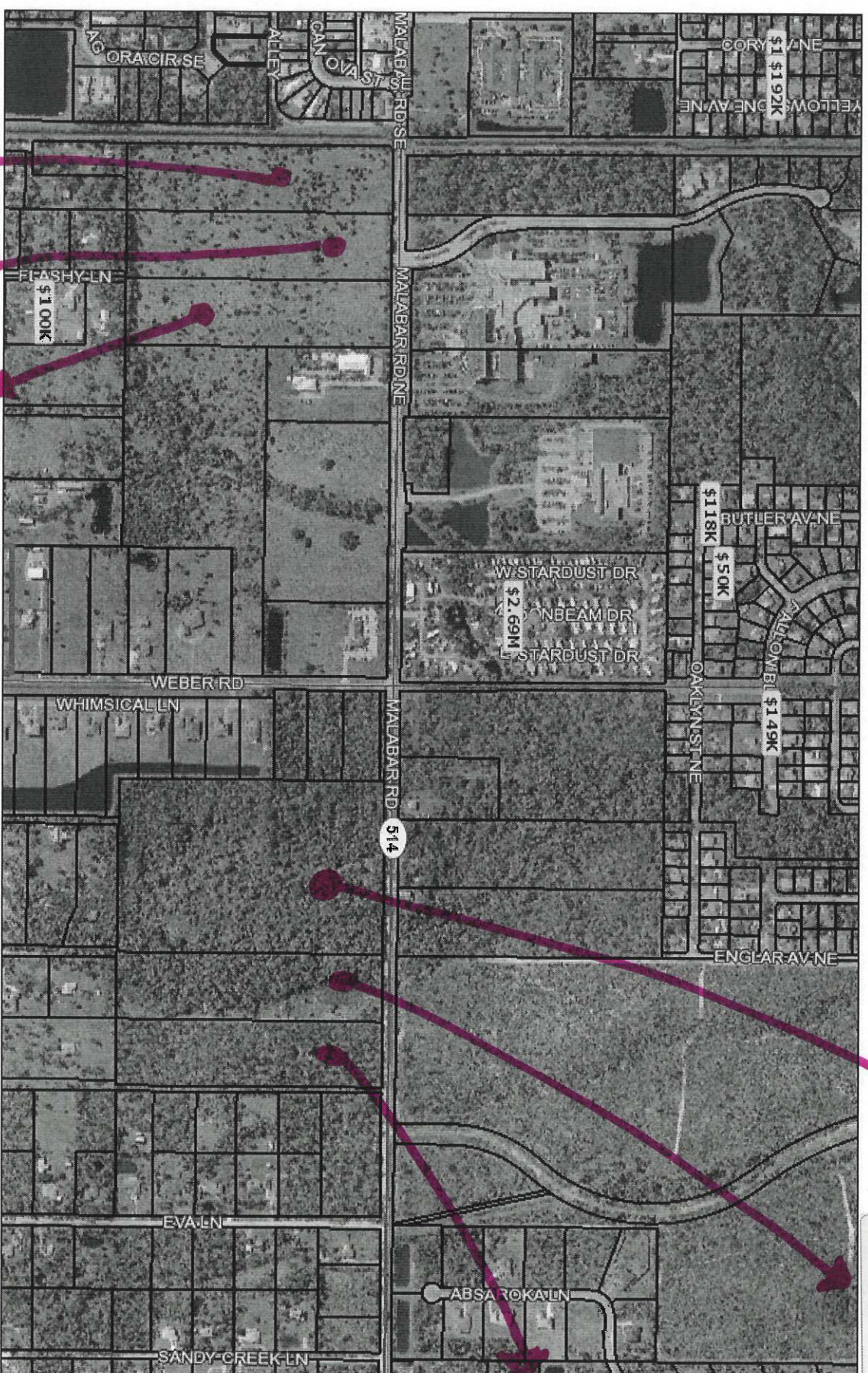
You are welcome to attend the May 6, 2019 Council meeting at 7:30PM and offer input. If unable to attend, we would request your written input on the proposed changes:

- Support the land use designation with the front 660' as R/LC and the rear 660' as RR
- Request the entire parcel have the same R/LC or RR designation
- Request an alternative

Sincerely,

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

Brevard County Property Appraiser



April 10, 2019

29-37-03-01-*1.01

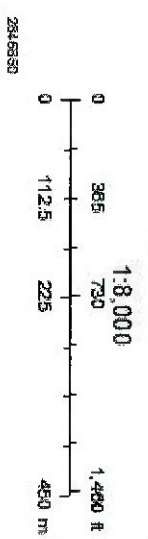
29-37-03-01-*1

29-37-03-01-*2.01

29-37-02-00-253

29-37-02-00-254

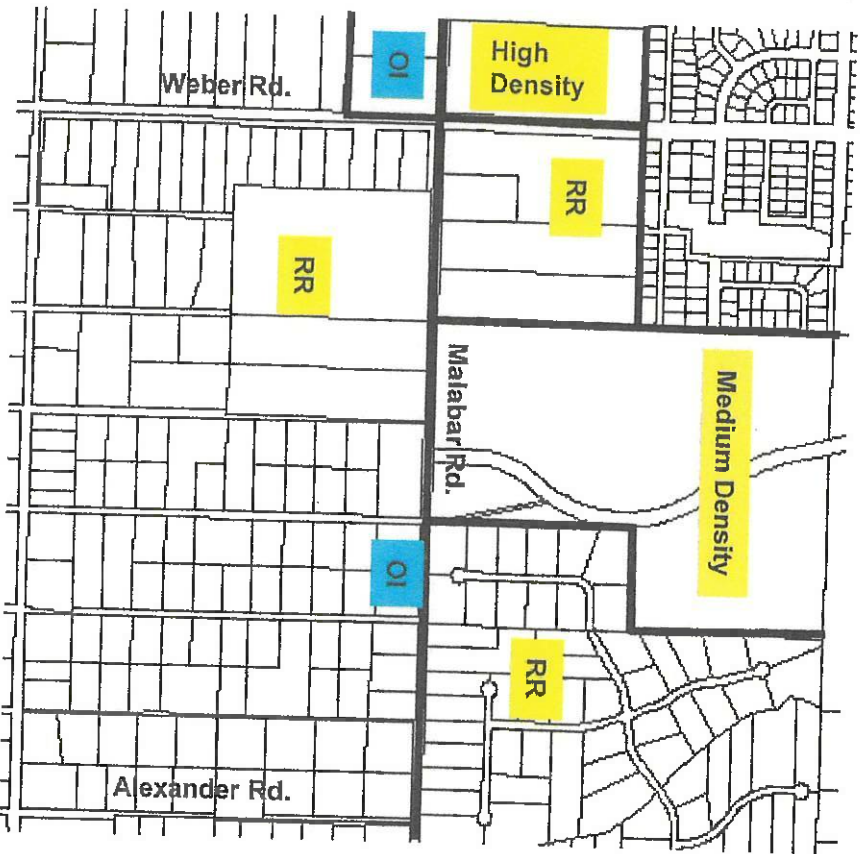
29-37-02-00-251



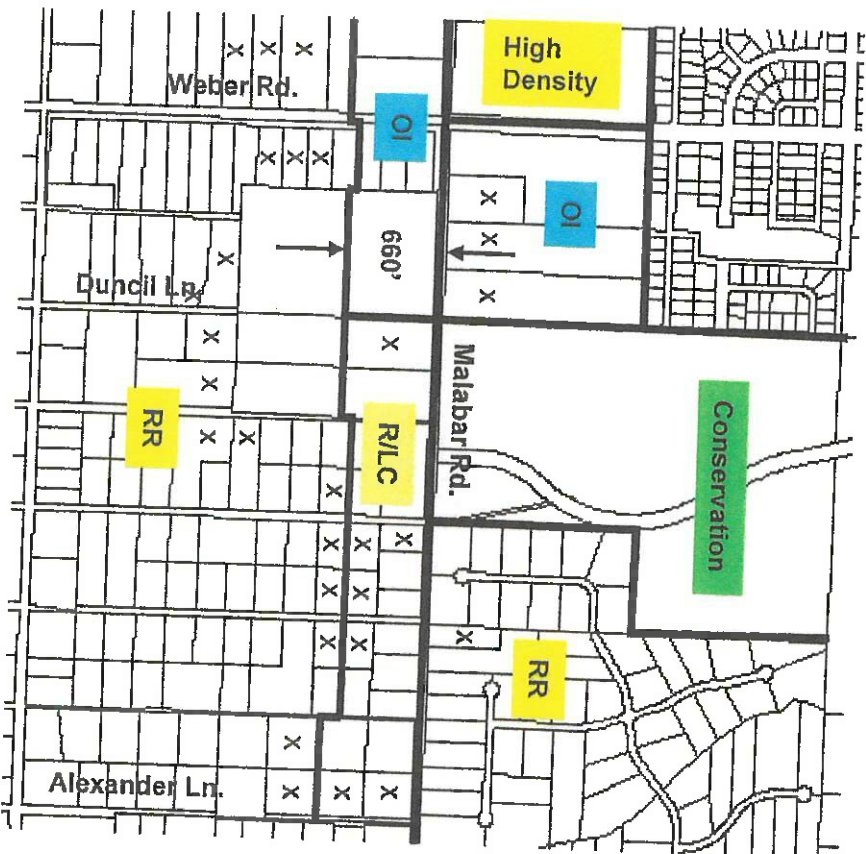
For illustration only. Not a survey. Map uses may not precisely align.

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

Present Land Use



Proposed Land Use

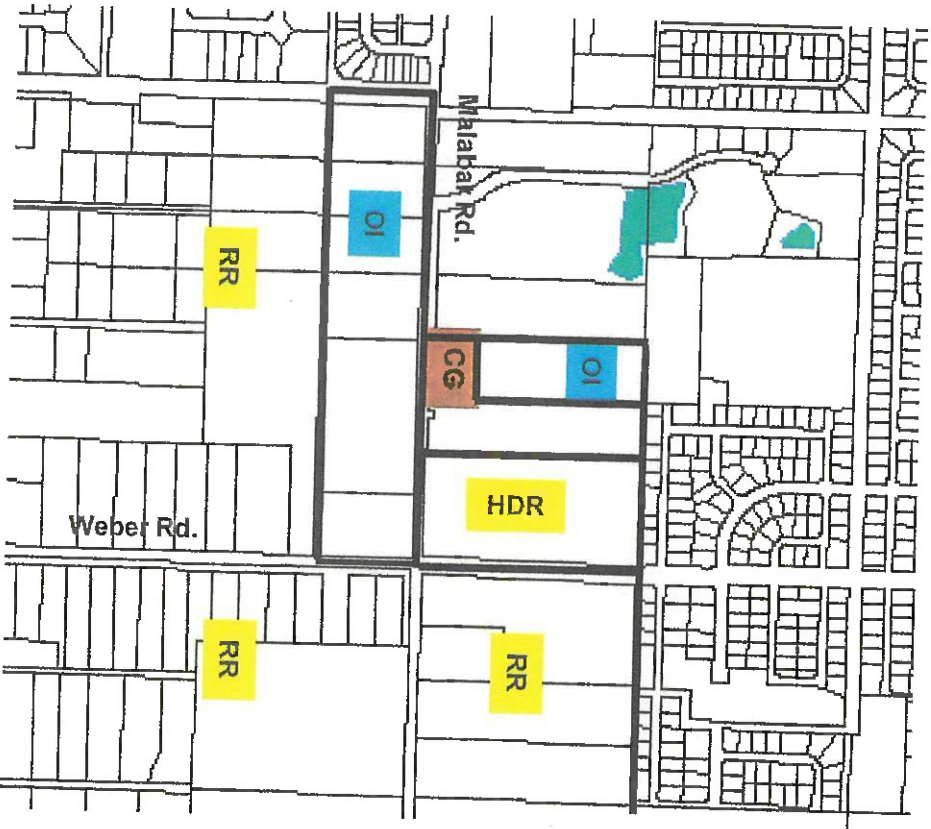


X = Homes

October 1, 2018

Land Use Along Malabar Rd. (West end)

Present Land Use



Proposed Land Use



X = Homes

October 1, 2018

6



Brevard County Property Appraiser

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Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account	2922488
Owners	Grimaldi, Vincent; Grimaldi, Anella
Mailing Address	1753 Shoreview Dr Indialantic FL 32903
Site Address	Not Assigned
Parcel ID	29-37-02-00-251
Property Use	9909 - Vacant Residential Land (Single-Family, Unplatted)
Exemptions	None
Taxing District	34Z0 - Malabar
Total Acres	10.00
Subdivision	--
Site Code	0381 - Malabar Rd (Sr514)
Plat Book/Page	--
Land Description	E 1/2 Of Lot 27 Ex To State Rd Subd

VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$140,000	\$130,000	\$130,000
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$140,000	\$130,000	\$126,500
Assessed Value School	\$140,000	\$130,000	\$130,000
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$140,000	\$130,000	\$126,500
Taxable Value School	\$140,000	\$130,000	\$130,000

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
07/30/1995	\$135,000	WD	Vacant	3496/2396
02/01/1995	\$161,500	QC	Vacant	3459/3008
01/30/1991	\$200,000	WD	Vacant	3107/1158
02/01/1983	--	WD	--	2410/1527

No Data Found



2725 Malabar Road
Malabar, FL 32950
321-727-7764 (Office) 321-727.9997 (Fax)
www.townofmalabar.org

April 10, 2019

Michael C. Manchester
Julianna Hirsch
PO Box 500068
Malabar, FL 32950

RE: Parcel ID 29-37-02-00-254 - Land Use Map – Malabar Comprehensive Plan Amendment – Invitation to Attend Meeting

Dear Property Owners:

The Town Council of the Town of Malabar is in the process of updating its Comprehensive Plan using the periodic *Evaluation and Appraisal Reporting* (E.A.R.) process required by the Florida State's Smart Growth Act.

The Future Land Use Map designates the Town's intended future development plans for designated areas within the Town.

Your property is approximately 1,320 feet deep from Malabar Road south. Along Malabar Road, the Future Land Use Map currently shows Rural Residential (RR) Land Use Designation for the full 1,320' depth of the acreage owned by you. The Town's proposed amendment would change the land use designation for the front 660' to *Residential/Limited Commercial* (R/LC) and keep the 660' south of that as *Rural Residential* (RR) land use designation.

There are other owners of parcels on the south side of Malabar Road that are 1,320' deep and they have voiced opposition to the split land use designations. Malabar Town Council has directed me to contact the six property owners that have parcels that are 1,320 feet in depth on the south side of Malabar Road and ask for their input, prior to a final decision.

You are welcome to attend the May 6, 2019 Council meeting at 7:30PM and offer input. If unable to attend, we would request your written input on the proposed changes:

- Support the land use designation with the front 660' as R/LC and the rear 660' as RR
- Request the entire parcel have the same R/LC or RR designation
- Request an alternative

Sincerely,

A handwritten signature in cursive script that reads "Debby K. Franklin".

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



Brevard County Property Appraiser

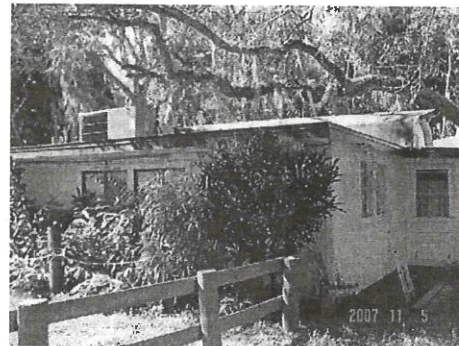
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Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account	2922490
Owners	Manchester, Michael C; Hirsch, Juliana
Mailing Address	PO Box 500068 Malabar FL 32950
Site Address	1035 Malabar Rd Malabar FL 32950
Parcel ID	29-37-02-00-254
Property Use	0110 - Single Family Residence
Exemptions	HEX1 - Homestead First HEX2 - Homestead Additional
Taxing District	34Z0 - Malabar
Total Acres	9.68
Subdivision	--
Site Code	0381 - Malabar Rd (Sr514)
Plat Book/Page	--
Land Description	W 1/2 Lot 27 Ex Rd RW



VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$193,320	\$168,310	\$127,210
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$120,260	\$117,790	\$115,370
Assessed Value School	\$120,260	\$117,790	\$115,370
Homestead Exemption	\$25,000	\$25,000	\$25,000
Additional Homestead	\$25,000	\$25,000	\$25,000
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$70,260	\$67,790	\$65,370
Taxable Value School	\$95,260	\$92,790	\$90,370

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
06/30/2015	--	QC	Improved	7450/2873
11/18/2013	--	QC	Improved	7022/1396
11/18/2013	--	QC	Improved	7016/1005
07/08/2010	\$96,300	QC	Improved	6216/0414
01/12/2005	--	QC	Improved	5415/2222
01/01/1998	--	PT	Vacant	3781/1798
02/01/1993	--	QC	Improved	3362/4921
08/01/1990	--	QC	--	3078/3668
08/12/1986	--	QC	--	2722/0172
12/20/1985	\$163,000	WD	--	2570/2517
06/01/1972	\$23,000	--	--	1253/0233

BUILDINGS

PROPERTY DATA CARD #1

Building Use: 0110 - Single Family Residence

Materials	Details	
Exterior Wall:	Plywd/T111	Year Built 1981
Frame:	Wood Frame	Story Height 8
Roof:	Bu-Tg/Mmbrn , Asph/Asb Shngl	Floors 1
Roof Structure:	Flat/Shed , Gmbrl/Mnsrd/Mntr	Residential Units 1
		Commercial Units 0

Sub-Areas		Extra Features	
Base Area (1st)	1,449	Patio - Concrete	574
Total Base Area	1,449	Patio - Concrete	461
Total Sub Area	1,449	Outbuilding	264
		Outbuilding	576
		Fireplace	1



2725 Malabar Road
Malabar, FL 32950
321-727-7764 (Office) 321-727.9997 (Fax)
www.townofmalabar.org

April 10, 2019

Weber Woods LLC
516 Delannoy Avenue
Cocoa, FL 32922

RE: Land Use Map – Malabar Comprehensive Plan Amendment – Invitation to Attend Meeting
RE: Parcel ID: 29-37-02-00.253

Dear Property Owners:

The Town Council of the Town of Malabar is in the process of updating its Comprehensive Plan using the periodic *Evaluation and Appraisal Reporting* (E.A.R.) process required by the Florida State's Smart Growth Act.

The Future Land Use Map designates the Town's intended future development plans for designated areas with the Town.

Your property is approximately 1,320 feet deep from Malabar Road south. Along Malabar Road, the Future Land Use Map currently shows Rural Residential (RR) Land Use Designation for the full 1,320' depth of the acreage owned by you. The Town's proposed amendment would change the land use designation for the front 660' to *Office institutional* (OI) and keep the 660' south of that as *Rural Residential* (RR) land use designation.

There are other owners of parcels on the south side of Malabar Road that are 1,320' deep and they have voiced opposition to the split land use designations. Malabar Town Council has directed me to contact the six property owners that have parcels that are 1,320 feet in depth on the south side of Malabar Road and ask for their input, prior to a final decision.

You are welcome to attend the May 6, 2019 Council meeting at 7:30PM and offer input. If unable to attend, we would request your written input on the proposed changes:

- Support the split land use designation with the front 660' as OI and the rear 660' as RR
- Request the entire parcel have the same OI designation
- Request an alternative

Sincerely,

A handwritten signature in black ink, appearing to read "Debby Franklin".

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



Brevard County Property Appraiser

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Phone: (321) 264-6700

<https://www.bcpa.us>

PROPERTY DETAILS



Account	2963199
Owners	Weber Woods LLC
Mailing Address	516 Delannoy Ave Cocoa FL 32922
Site Address	Not Assigned
Parcel ID	29-37-02-00-253
Property Use	9909 - Vacant Residential Land (Single-Family, Unplatted)
Exemptions	None
Taxing District	3420 - Malabar
Total Acres	24.20
Subdivision	--
Site Code	0381 - Malabar Rd (Sr514)
Plat Book/Page	--
Land Description	Lot 26 & Part Of Lot 25 Of Pb 1 Pg 165 As Desc IN Orb 8065 Pg 1488 Exc Orb 8313 Pg 1942

VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$338,800	\$314,600	\$314,600
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$338,800	\$314,600	\$306,130
Assessed Value School	\$338,800	\$314,600	\$314,600
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$338,800	\$314,600	\$306,130
Taxable Value School	\$338,800	\$314,600	\$314,600

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
06/26/2006	--	QC	Vacant	5668/0077
04/06/2005	--	WD	Improved	5447/7116

No Data Found



2725 Malabar Road
Malabar, FL 32950
321-727-7764 (Office) 321-727.9997 (Fax)
www.townofmalabar.org

April 10, 2019

Mr. Thomas Fiocchi
Mr. John Fiocchi
1322 13th Terrace
Palm Beach Gardens, FL 33418

RE: Parcel ID: 29-37-03-01-*. -1.01 Land Use Map – Malabar Comprehensive Plan Amendment
– Invitation to Attend Meeting

Dear Sirs:

The Town Council of the Town of Malabar is in the process of updating its Comprehensive Plan using the periodic *Evaluation and Appraisal Reporting* (E.A.R.) process required by the Florida State's Smart Growth Act.

The Future Land Use Map designates the Town's intended future development plans for designated areas within the Town.

Your property is approximately 1,320 feet deep from Malabar Road south. Along Malabar Road, the Future Land Use Map currently shows Office Institutional (OI) Land Use Designation for the front 660' of the acreage owned by you. The 660' south of that will also remain as Rural Residential (RR) land use designation.

There are other owners of parcels on the south side of Malabar Road that are 1,320' deep and they have voiced opposition to the split land use designations. Malabar Town Council has directed me to contact the six property owners that have parcels that are 1,320 feet in depth on the south side of Malabar Road and ask for their input, prior to a final decision.

You are welcome to attend the May 6, 2019 Council meeting at 7:30PM and offer input. If unable to attend, we would request your written input on the proposed changes:

- Support the split land use designation with the front 660' as OI and the rear 660' as RR
- Request the entire parcel have the same OI designation

Sincerely,

A handwritten signature in cursive script, appearing to read "Debby K. Franklin".

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



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

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PROPERTY DETAILS

Account	2922778
Owners	Fiocchi, Thomas R; Fiocchi, John D
Mailing Address	1322 13Th Terrace Palm Beach Gardens FL 33418
Site Address	Not Assigned
Parcel ID	29-37-03-01-*-1.01
Property Use	6100 - Grazing Land - Soil Capability Class II - Vacant
Exemptions	None
Taxing District	34Z0 - Malabar
Total Acres	9.75
Subdivision	Floradora Pines, Resubd Of
Site Code	0381 - Malabar Rd (Sr514)
Plat Book/Page	0008/0016
Land Description	Floradora Pines, Resubd Of W 1/2 Of Lot 1 Ex St Rd 514



VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$581,220	\$528,380	\$528,380
Agricultural Land Value	\$1,460	\$1,460	\$1,460
Assessed Value Non-School	\$1,460	\$1,460	\$1,460
Assessed Value School	\$1,460	\$1,460	\$1,460
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$1,460	\$1,460	\$1,460
Taxable Value School	\$1,460	\$1,460	\$1,460

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
01/17/2014	--	TD	Vacant	7051/0617
01/04/2013	--	QC	Vacant	6793/0500
02/28/2011	--	QC	Vacant	6342/2990
03/09/1972	\$19,000	WD	Improved	1233/0420

No Data Found



2725 Malabar Road
Malabar, FL 32950
321-727-7764 (Office) 321-727.9997 (Fax)
www.townofmalabar.org

April 10, 2019

Donna S. Yu and Kung Shih
1650 Calera Creek Heights Drive
Milpitas, CA 95035

Parcel ID: 29-37-03-01-*. -1 Land Use Map – Malabar Comprehensive Plan Amendment –
Invitation to Attend Meeting

Dear Property Owners:

The Town Council of the Town of Malabar is in the process of updating its Comprehensive Plan using the periodic *Evaluation and Appraisal Reporting* (E.A.R.) process required by the Florida State's Smart Growth Act.

The Future Land Use Map designates the Town's intended future development plans for designated areas within the Town.

Your property is approximately 1,320 feet deep from Malabar Road south. Along Malabar Road, the Future Land Use Map currently shows Office Institutional (OI) Land Use Designation for the front 660' of the acreage owned by you. The 660' south of that will also remain as Rural Residential (RR) land use designation.

There are other owners of parcels on the south side of Malabar Road that are 1,320' deep and they have voiced opposition to the split land use designations. Malabar Town Council has directed me to contact the six property owners that have parcels that are 1,320 feet in depth on the south side of Malabar Road and ask for their input, prior to a final decision.

You are welcome to attend the May 6, 2019 Council meeting at 7:30PM and offer input. If unable to attend, we would request your written input on the proposed changes:

- Support the split land use designation with the front 660' as OI and the rear 660' as RR
- Request the entire parcel have the same OI designation

Sincerely,

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

2



Brevard County Property Appraiser

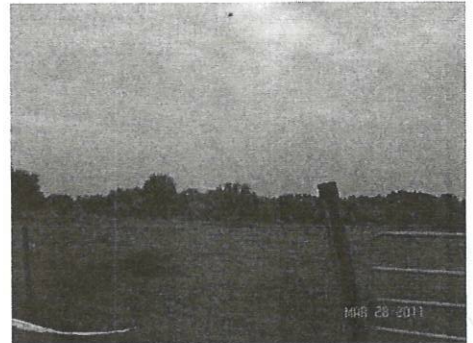
Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account	2922777
Owners	Yu, Donna S; Shih, Kung
Mailing Address	1650 Calera Creek Heights Dr Milpitas CA 95035
Site Address	Not Assigned
Parcel ID	29-37-03-01-* -1
Property Use	6100 - Grazing Land - Soil Capability Class II - Vacant
Exemptions	None
Taxing District	34Z0 - Malabar
Total Acres	9.75
Subdivision	Floradora Pines, Resubd Of
Site Code	0381 - Malabar Rd (Sr514)
Plat Book/Page	0008/0016
Land Description	Floradora Pines, Resubd Of E 329.4 Ft Of Lot 1 Ex Rd R/W



VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$581,220	\$528,380	\$528,380
Agricultural Land Value	\$1,460	\$1,460	\$1,460
Assessed Value Non-School	\$1,460	\$1,460	\$1,460
Assessed Value School	\$1,460	\$1,460	\$1,460
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$1,460	\$1,460	\$1,460
Taxable Value School	\$1,460	\$1,460	\$1,460

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
02/01/1984	--	QC	--	2488/1584
02/01/1979	\$45,000	--	--	2004/0434
05/01/1972	\$450,000	--	--	1249/0226

No Data Found



2725 Malabar Road
Malabar, FL 32950
321-727-7764 (Office) 321-727.9997 (Fax)
www.townofmalabar.org

April 10, 2019

Sjb LLC
1195 N Military Trail, Ste. A
West Palm Beach, FL 33409

RE: Parcel ID 29-37-03-01-*. -2.01 Land Use Map – Malabar Comprehensive Plan Amendment
– Invitation to Attend Meeting

Dear Property Owners:

The Town Council of the Town of Malabar is in the process of updating its Comprehensive Plan using the periodic *Evaluation and Appraisal Reporting* (E.A.R.) process required by the Florida State's Smart Growth Act.

The Future Land Use Map designates the Town's intended future development plans for designated areas within the Town.

Your property is approximately 1,320 feet deep from Malabar Road south. Along Malabar Road, the Future Land Use Map currently shows Office Institutional (OI) Land Use Designation for the front 660' of the acreage owned by you. The 660' south of that will also remain as Rural Residential (RR) land use designation.

There are other owners of parcels on the south side of Malabar Road that are 1,320' deep and they have voiced opposition to the split land use designations. Malabar Town Council has directed me to contact the six property owners that have parcels that are 1,320 feet in depth on the south side of Malabar Road and ask for their input, prior to a final decision.

You are welcome to attend the May 6, 2019 Council meeting at 7:30PM and offer input. If unable to attend, we would request your written input on the proposed changes:

- Support the split land use designation with the front 660' as OI and the rear 660' as RR
- Request the entire parcel have the same OI designation

Sincerely,

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



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

PROPERTY DETAILS

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

Account	2922780
Owners	Sjb LLC
Mailing Address	1195 N Military Trl Ste A West Palm Beach FL 33409
Site Address	Not Assigned
Parcel ID	29-37-03-01-*2.01
Property Use	0010 - Vacant Residential Land (Single Family, Platted) *
Exemptions	None
Taxing District	34Z0 - Malabar
Total Acres	9.75
Subdivision	Floradora Pines, Resubd Of
Site Code	0381 - Malabar Rd (Sr514)
Plat Book/Page	0008/0016
Land Description	Floradora Pines, Resubd Of W 329.4 Ft Of Lot 2 Ex Rd R/W

VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$570,850	\$528,380	\$528,380
Agricultural Land Value	\$0	\$1,460	\$1,460
Assessed Value Non-School	\$570,850	\$1,460	\$1,460
Assessed Value School	\$570,850	\$1,460	\$1,460
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$570,850	\$1,460	\$1,460
Taxable Value School	\$570,850	\$1,460	\$1,460

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
07/02/2004	\$600,000	WD	Vacant	5333/5467
07/12/2001	--	WD	Vacant	4418/0646
06/01/1985	\$341,300	WD	--	2610/2406
11/01/1984	--	NN	--	2554/0534
12/01/1982	\$45,000	WD	--	2403/2152

No Data Found

Discussion

Flum depth

R/W
ON

29-37-03-01*-1.01
10AC \$581,220 mkt value
see Above -1
10AC same value
see Above -2.01
10AC 600,000 value
29-37-02-00-253
24 AC 338,000 value
10AC 193,320 value -254

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 7
Meeting Date: May 6, 2019

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

SUBJECT: Determination of "Access" to 20-acre parcel west of Corey Road in line with Beekeeper with conditions

BACKGROUND/HISTORY:

This issue deals with the portion of Old Mission Road ROW running west of Corey Road.

- On the *west* side of Corey Road a home was allowed to be built very close to the ROW in order to avoid wetlands.
- The Town vacated Alabama Lane at the south side of this Parcel preventing access on a ROW that is not in the wetlands.
- Access is now only possible through the Old Mission ROW that impacts wetlands.

Since the provision was removed from the Code to allow for a variance dealing with road improvement, the owner of Parcel 751 is requesting Council approval to utilize the existing ROW to access and develop his 20-acre site.

The Attorney has recommended an agreement that would require this property owner or his successors to pay their proportionate share if the owners of parcels to the west develop the road.

ATTACHMENTS:

Application from property owner, Chris Thomas
Memo from Karl Bohne

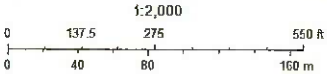
ACTION OPTIONS:

Approval of request with Conditions

Brevard County Property Appraiser



May 2, 2019



284885d

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

Thomas Variance request memo

First off I do not believe that a variance is authorized by the BOA. This will need to be a council decision. As you indicated the proposed travel way known as Old Mission is technically a Minor Collector necessitating a 70 foot ROW. The Old Mission ROW is a 70 feet. It is both impractical and no conceivable to require a 100 foot ROW in this area because none of the property which abuts the proposed portion of Old Mission to be improved is owned by Thomas. Furthermore the property to the north has a structure right on the property line so it may not be feasible to improve the entire Old Mission ROW as it may go right next to the existing structure located on the property to the north, which as you can imagine can create additional issues. So at a minimum we are dealing with a 70 foot ROW that has about a 16 foot travel way to the Thomas property. I also understand that there are some wetland issues abutting the Thomas property as well as to the west of the Thomas property.

I can support a council decision to require improvement of the existing 16 foot travel way to our minimum dirt road standards. We do have improved right of ways in the town which are 16 foot or less so we have seen this done before. However, we need to enter into an agreement with the owner, to be executed in recordable form and will run with the land, which would state that should owners of parcels west of the Thomas property desire to improve their lots abutting Old Mission then Thomas would agree to reimburse such owners who would have to construct the road from its terminus at the east end of the Thomson property westward. We would need to figure out the formulas for such reimbursement.

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

VARIANCE APPLICATION

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

Name of Applicant(s) Christopher Thomas Tel: (972)839-0774

Mailing Address: 299 Lachin St SW, Palm Bay, FL 32908

Legal description of property covered by application:

Township 29S, Range 37E, Section 11, Lot/Block Lot 15, Parcel Pb1 Pg165, Subdivision _____

Other Legal Brevard Co. Taz Account:29316987, Parcel ID: 29-37-11-00-751

Property Address: Not Assigned

Present zoning classification RR 65

Intended use for property Single-family residential

Reason for variance request (state specific hardship or attach correspondence, drawings, etc.).
See attachment for written request for variance.

Required attachments:

- Hearing fee of \$300.00 which includes advertising, administrative time and mailing. Any additional costs* shall be paid by the applicant. (*Additional costs may include, but are not limited to, engineering fees, attorney fees, etc.)
- Proof of ownership
- Site Plan
- Water and sewer facilities to be fully explained (if applicable).
- List of property owners (with tax parcel numbers) within 500 feet of referenced property as shown in the records of the County Property Appraiser. This "Radius" package is available from the Brevard County Planning and Zoning GIS Section located at the Viera government center, in Building A, Room 114, phone 321-633-2060. There is a fee for this package.

Applicant(s)

Date

Thomas Property – Request for Variance

Since the shortest and most easily developable right-of-way route to the parcel was vacated, the two remaining access points would be to the northeast corner of the property and the southwest corner of the property. Both of these two remaining right-of-ways would require work in wetlands to meet Town roadway requirements. According to consultation with Florida Department of Environmental Protection (DEP), impacts to wetlands for roadway development would require wetland mitigation. In order to meet the cumulative impact criteria of Section 10.2.8 Applicant's Handbook (A.H.) Volume I, mitigation must be proposed within the same hydrologic basin that the proposed impacts are to occur. We have explored the environmental permitting requirements of constructing a roadway to Town ordinances from Moss Rose Avenue. Since our parcel is located within the Central Indian River Lagoon Hydrologic Basin, our options for purchasing wetland impact credits is limited to the Basin 22 Mitigation Bank. This mitigation bank currently sells its credits for the outrageous price of \$165,000.00 per credit. This wetland impact mitigation expense would need to be incurred for the State to authorize the wetland impact and does not reflect the additional construction costs of demucking the wetland, additional fill expenses for filling the wetland, and the consulting fees associated with wetland impact permitting. In order to gain access to our parcel from Moss Rose Avenue in the alignment pictured above, forested wetland impact credits would need to be purchased for fill impacts to deep swamp. The wetland impact credit purchase from Basin 22 Mitigation Bank required to develop the remaining right-of-way from Moss Rose Avenue to Town ordinances is estimated to be \$69,300.00. The wetland mitigation expense associated with the previous right-of-way from Moss Rose Ave that was vacated by the Town is \$0.00. The additional \$69,300.00 wetland mitigation expense for accessing the parcel from Moss Rose Avenue from the remaining right-of-way is a special circumstance not created by the applicant. Due to the hardship of wetland mitigation costs, access to our parcel through the deep swamp to the southwest corner of the lot is not a financially viable option.

Our last remaining access point to our parcel is to northeast corner via the existing single lane roadway within the Old Mission right-of-way. This concrete rubble roadway extends from the intersection of Corey Road and Bee Keeper lane to the northeast corner of our lot. Aerial photographs from 1999 clearly show the roadway to our parcel as being 16 feet in width and 670 feet in length. The north and south side of this roadway is bordered by wetlands near Corey Road as confirmed by DEP on September 7, 2017.



Brevard County Property Appraiser

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Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account	2931687
Owners	Thomas, Christopher B; Thomas, Stacey I
Mailing Address	299 SW Lachine SW St Palm Bay FL 32908
Site Address	Not Assigned
Parcel ID	29-37-11-00-751
Property Use	9909 - Vacant Residential Land (Single-Family, Unplatted)
Exemptions	None
Taxing District	34Z0 - Malabar
Total Acres	20.00
Subdivision	—
Site Code	0001 - No Other Code Appl.
Plat Book/Page	--
Land Description	Lot 15 Of Pb 1 Pg 165

VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$153,000	\$98,600	\$98,600
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$153,000	\$98,600	\$98,600
Assessed Value School	\$153,000	\$98,600	\$98,600
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$153,000	\$98,600	\$98,600
Taxable Value School	\$153,000	\$98,600	\$98,600

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
05/26/2017	\$185,000	WD	Vacant	7900/1497
02/19/2004	\$185,000	WD	Vacant	5226/1943
07/15/1964	\$11,500	WD	Improved	0710/0082

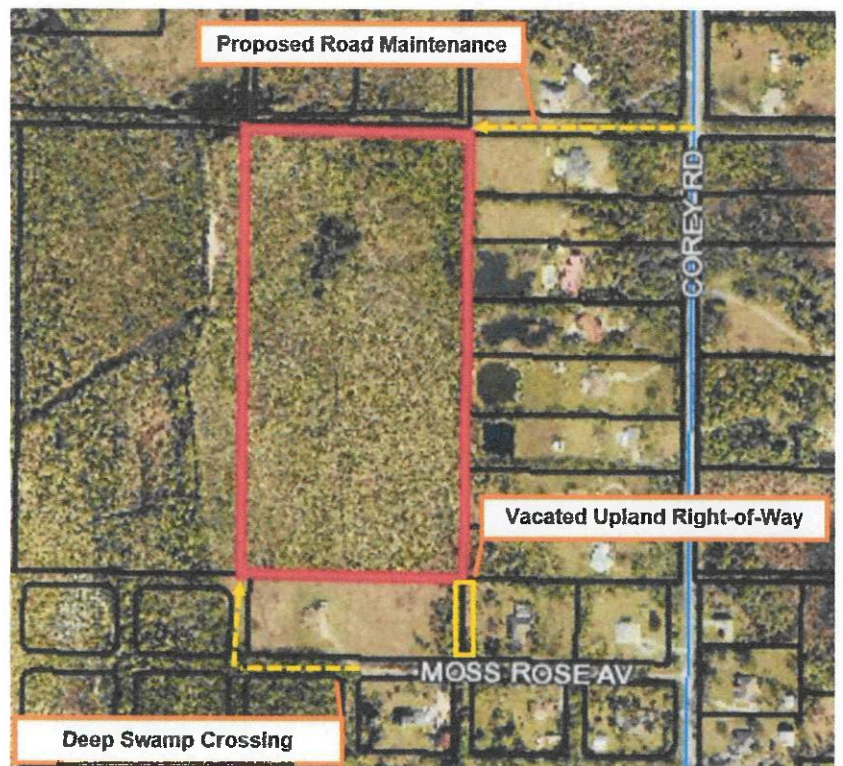
No Data Found

Thomas Property – Request for Variance

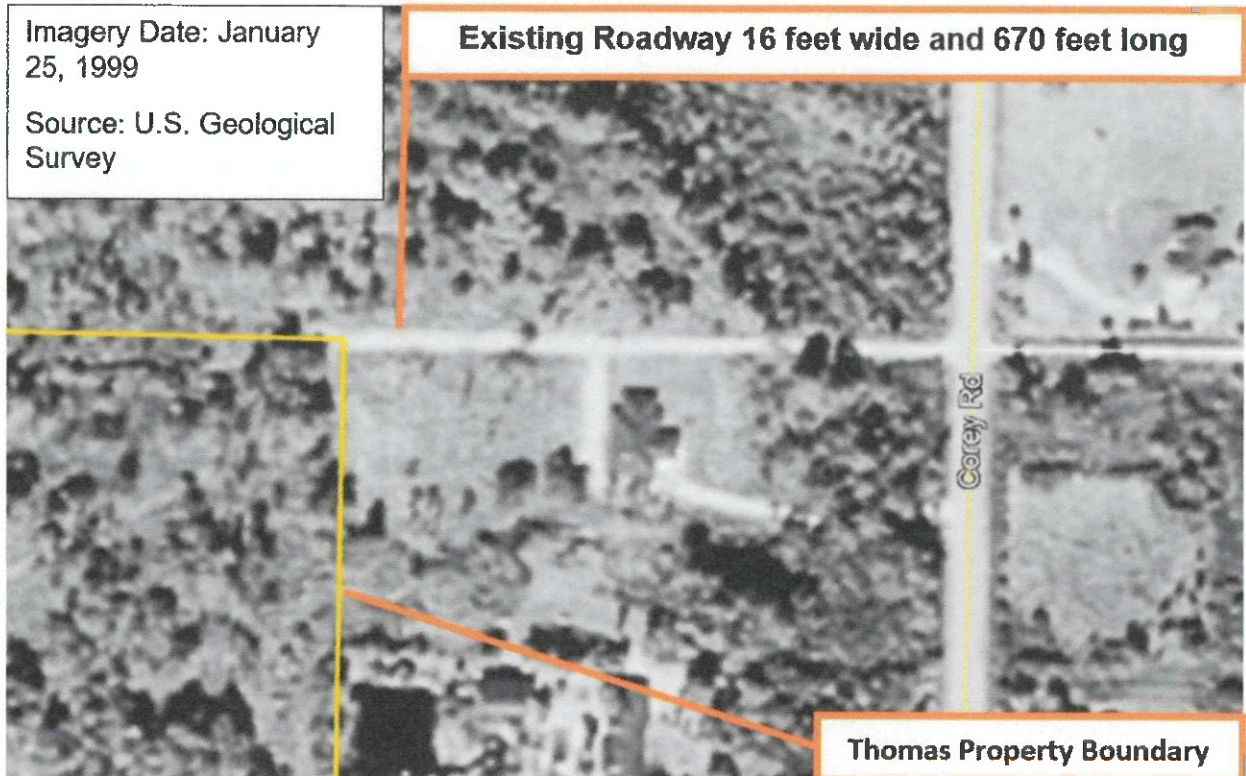
March 4, 2019

Dear Town of Malabar Board of Adjustment,

My wife Stacey and I (Christopher Thomas) are requesting a variance for Town of Malabar Road Improvement Regulations, Chapter 13, Malabar Code for the purpose of reasonable right of access to parcel 29-37-11-00-751 located west of Corey Road and north of Moss Rose Avenue. The parcel is 20 acres in size and contains forested uplands and wetlands. After we purchased the parcel in 2017, we discovered that the shortest public right-of-way access point from the existing Moss Rose Avenue to the southeast corner of our property had been previously vacated by the Town of Malabar. By vacating this public right-of-way that once connected our the southeast corner to Moss Rose Avenue, the Town left us with only two alternative public right-of-way access points, both of which are substantially longer in distance to reach our parcel than the public right-of-way that was vacated. In addition, the two remaining public right-of-way access points contain regulated wetlands while the vacated right-of-way did not. By vacating the only public right-of-way access point to our parcel that consisted entirely of uplands, the Town ensured that all future property owners would be forced to permit wetland fill impacts within remaining public-right-of-ways in order to comply with Town road improvement ordinances. We have worked with Town officials to explore whether the Town's vacating of the public right-of-way could be potentially reversed. According to correspondence received by Attorney Karl W. Bohne, Jr. on behalf of the Town of Malabar on November 13, 2017, there is no hope of getting the previously vacated right-of-way restored.



Thomas Property – Request for Variance



This existing roadway is bordered by the Robinson property of 2820 Corey Road to the north and the Hammer property at 2920 Corey Road to the south. This roadway has not been maintained in recent years. The eastern portion of the roadway has been overgrown by Brazilian pepper and the western portion of the roadway has been overgrown by lawn grasses.



Thomas Property – Request for Variance

Due to the extent of jurisdictional wetlands within the Robinson property, the Robinson home is situated within uplands located at the southwest corner of their lot. According to online Brevard County Property Appraiser maps, the southeast corner of the Robinson home is less than 9 feet away from the 60' Old Mission right-of-way boundary. Accessory structures of the Robinson home appear to extend approximately 5 feet within the Old Mission right-of-way. In addition, maintained landscape trees, privacy hedges and banana trees within the Robinson property are located entirely within the Old Mission right-of-way. In order to meet Town ordinances for 60' right-of-way, our introduction to the neighborhood would be tearing down our neighbors' accessory structures, clearing their maintained privacy hedges and building roadway within 10 feet of their home. The existing roadway stabilized with concrete rubble within the Old Mission right-of-way provides sufficient vehicular access for our parcel without adversely affecting existing homes and properties. We request to conduct routine and custodial maintenance of the existing 16 foot by 670 foot roadway for site access. We are requesting to maintain the existing roadway with no expansion of the roadway footprint resulting in wetland dredge and fill impacts that would require wetland impact authorization from the State and a \$165,000.00 per credit mitigation purchase from Basin 22 Mitigation Bank. This request for routine and custodial maintenance of the existing roadway includes the clearing of Brazilian pepper trees within uplands and minor grading activities with no proposed changes to existing roadway elevations. These roadway maintenance activities should qualify for a State exemption of under Chapter 62-340.051(4)(c) Florida Admirative Code (FAC). If the proposed maintenance of the existing roadway does not qualify for an State exemption, we will obtain any permits necessary from DEP or the St. Johns River Water Management District.

In summary, we are seeking relief from *Section 13-38 Precondition to issuance of building permit* which requires the completion of the road to the furthest boundary of the lot and *Section 13-48 Improvements of unaccepted portion of partially improved road* which requires us to bring the road up to the established design standards for a 60' right-of-way to obtain a building permit for the lot. In accordance with Section 13-38(c) (1-6) we provide the following justifications:

(1) The northeast corner of our lot contains uplands and is accessible from Corey Road by an existing 16 foot by 670 foot roadway within the Old Mission right-of-way. The central portion and northwest corner of our northern property boundary contains jurisdictional wetland per DEP. In order to comply with existing Town ordinance Section 13-38 to complete a roadway to the northwest corner of our lot, a roadway that dead-ends within forested wetlands would need to

Thomas Property – Request for Variance

be constructed. The DEP will not issue a permit for constructing a roadway that dead-ends within forested wetlands since this activity would be reasonably intended to result in future activities that would result in adverse impacts to water quality and wetland and other surface waters functions as per Section 10.2.7.(d) Applicant's Handbook Volume I. In addition, constructing a roadway that dead-ends in wetlands would result in massive wetland impact mitigation costs while providing no practical purpose.

(2) The special circumstances that exist are not caused by the applicant. The subject 20-acre parcel contained public right-of-way access from Moss Road that was 235 feet long and consisted entirely of uplands. This optimal access route to the site was vacated by the Town forcing land owners to conduct work in wetlands in order to comply with Town ordinances for property access. Due to current State rule criteria and circumstances beyond the control of the applicant, the only mitigation bank option is Basin 22 Mitigation Bank. This private business entity is taking advantage of its mitigation bank credit monopoly within Basin 22 by charging \$165,000.00 per wetland impact credit, which is an unreasonable financial burden for a single-family home owner.

(3) The request to utilize and maintain the existing 16 foot by 670 foot roadway within the Old Mission right-of-way will not be injurious or detrimental to the public welfare.

(4) The request to utilize and maintain the existing 16 foot by 670 foot roadway is the minimum variance that will make possible the reasonable use of the land. Constructing a roadway per existing Town ordinance will result destruction of local property and will require work in regulated wetlands within a hydrologic basin where the only mitigation bank credits available are \$160,000.00 per credit.

(5) The applicant acknowledges that the board of adjustment may impose additional reasonable conditions and safeguards that it deems appropriate.

(6) The applicant acknowledges that the board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.

My wife Stacey and I thank the Town of Malabar Board of Adjustment for taking the time to review our request to utilize and maintain the existing 16 foot by 670 foot roadway within the Old Mission Right-of-Way to access to our property.

Thomas Variance request memo

First off I do not believe that a variance is authorized by the BOA. This will need to be a council decision. As you indicated the proposed travel way known as Old Mission is technically a Minor Collector necessitating a 70 foot ROW. The Old Mission ROW is a 70 feet. It is both impractical and no conceivable to require a 100 foot ROW in this area because none of the property which abuts the proposed portion of Old Mission to be improved is owned by Thomas. Furthermore the property to the north has a structure right on the property line so it may not be feasible to improve the entire Old Mission ROW as it may go right next to the existing structure located on the property to the north, which as you can imagine can create additional issues. So at a minimum we are dealing with a 70 foot ROW that has about a 16 foot travel way to the Thomas property. I also understand that there are some wetland issues abutting the Thomas property as well as to the west of the Thomas property.

I can support a council decision to require improvement of the existing 16 foot travel way to our minimum dirt road standards. We do have improved right of ways in the town which are 16 foot or less so we have seen this done before. However, we need to enter into an agreement with the owner, to be executed in recordable form and will run with the land, which would state that should owners of parcels west of the Thomas property desire to improve their lots abutting Old Mission then Thomas would agree to reimburse such owners who would have to construct the road from its terminus at the east end of the Thomson property westward. We would need to figure out the formulas for such reimbursement.

Memorandum

To: Town Clerk, Town of Malabar

Date: November 13, 2017

From: Karl W. Bohne, Jr.

Re: Thomas Property Right of Way Access

You recently asked me for an opinion regarding the above referenced matter. I see and understand the issue; however, we cannot administratively undo the vacate. We need to see if the property owner of the Thomas piece at the time of the vacate was part of the notification process. I do see, as I previously stated, issues with an administrative reversal of the vacate, even assuming there is such a legal process to accomplish this.

This situation could be analyzed under those cases which have looked at the closing of a road which results in a less convenient access to property.

It is settled in this State that the right of a citizen to use the public streets is not absolute and unconditional but may be controlled and regulated in the interest of the public good. *State Ex Rel. Nicholas v. Headley*, 48 So. 2d 80 (Fla. 1950). However, such regulations must not interfere with property rights. The right of access to one's land is a property right. See, *Anhoco Corporation v. Dade County*, Fla. 1962, 144 So.2d 793.

The Florida Supreme Court has established that loss of access is only compensable when access is destroyed entirely or substantially diminished. See, *Anhoco v. Dade County*, 144 So.2d 793 (Fla. 1962), *Palm Beach County v. Tessler*, 538 So.2d 846 (Fla. 1989), *FDOT v. Gefen*, 636 So.2d 1345 (Fla. 1994), *Awbrey v. City Panama Beach*, 283 So.2d 114 (Fla.1 DCA 1973).

In fact, road agencies may change or entirely close access to a public road or highway near the subject property, thereby rendering access to a particular property more circuitous or less convenient, without causing a compensable taking of the landowner's interest. See *Department of Transportation v. Gefen*, 636 So.2d 1345 (Fla. 1994); *Department of Transportation v. Ansbacher*, 672 So.2d 660 (Fla. 1st DCA 1996) (improper to include in compensation any damages for impact of diminished access as a result of closure of non-abutting roads); *Rubano v. Department of Transportation*, 656So.2d 1264 (Fla. 1995) (loss of the most convenient access is not compensable where other suitable access continues to exist and a taking has not occurred when a governmental action causes the flow of traffic on an abutting road to be diminished); *City of Port St. Lucie v. Parks*, 452 So.2d 1089 (Fla. 4th DCA 1984); but see *Dep't of Tansp. V. Kreider*, 658 So.2d 548 (Fla. 4th DCA 1995) (taking of the previously existing direct access and replacing it with a service road substantially diminished the access, and thus it was compensable).

The Legislature, however, in enacting Ch. 316, F. S., recognized that there are conditions which require municipalities to pass certain traffic ordinances regulating municipal traffic that are not required to regulate the movement of traffic outside of the municipalities. See, section 316.002. In, Section 316.008 (1), the statute expressly enumerates those areas within which municipalities may control certain traffic movement or parking on the streets and highways in their respective jurisdictions. Among those areas so enumerated, paragraphs (g), (m), (n), and (p) of 316.008(1) respectively empower a municipality in the reasonable exercise of its police power to restrict the use of streets. Therefore, under certain conditions, and in the reasonable exercise of its police power, a municipality may regulate or prohibit the use of certain streets within the municipality by any class or kind of traffic or designate and restrict or regulate the use of its public streets as prescribed by the provisions of 316.008. Such limited authority may not, however, be employed to absolutely bar access to property as owners of property have an implied right of access to their property in a platted subdivision.

In, AGO 90-51 it was stated that a municipality can't install a security gate on a public road limiting access citing 316.2045 (1): It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians traveling thereon. While that seems clear what is not clear under that opinion is whether a municipality may inhibit vehicular traffic on an unimproved and unapproved right of way. Also, a careful reading of 316.2045 (1) shows that it may not be applicable to a situation where a right of way is blocked or barricaded. The statute provides: "It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of..." It cannot be said that where you have an unimproved and unapproved right of way normal use includes vehicular traffic. I believe a municipality can restrict use of an unimproved and unapproved ROW.

F.S.316.006 (2) provides additional support for a municipality to restrict use of roads within its jurisdiction:

"(2) MUNICIPALITIES.—

(a) Chartered municipalities shall have original jurisdiction over all streets and highways located within their boundaries, except state roads, and may place and maintain such traffic control devices which conform to the manual and specifications of the Department of Transportation upon all streets and highways under their original jurisdiction as they shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic."

I have yet to find any Florida statutory or case law which states that legal access to land which is served by a road which appears on paper but has not been approved by the municipality must include vehicular access. As long as legal access can be made to the property then that is all that appears to be required. Furthermore, according to the town's code no development permits can be granted for such properties until a road is built per code. There still remains legal access with limitations. See for example FS 335.181 (2) (a) (Every owner of property which abuts a road on the State Highway System has a right to

reasonable access to the abutting state highway but does not have the right of unregulated access to such highway), FS 336.09 (1) (Counties have the power to Vacate, abandon, discontinue and close any existing public or private street, alleyway, road, highway, or other place used for travel, or any portion thereof, other than a state or federal highway, and to renounce and disclaim any right of the county and the public in and to any land in connection therewith.

So based upon what you have provided to me the issue is not one of the Town denying access, but rather the Florida Dept of Transportation denying a connection due to its location to an already existing access cut.

Furthermore, I do not see any grounds for the town to exercise its power of eminent domain to take property of a private individual for the purpose of providing private access to another's property. The reason is that there is no public purpose for the exercise of such power.

According to the legal theory of eminent domain, the government can seize private property for public use in exchange for full compensation to be paid to the property owner. A property owner may also argue that the government's planned use of the property does not qualify as public use. Well-established examples of a public use include the construction of schools, highways, police stations, court houses, parks, and public buildings. If no public benefit exists, the government's claim will be dismissed.

While there is a public purpose to take property for the purpose of constructing a road, the issue becomes clouded if that road merely serves one private individual's property and effectively only serves that one private purpose.

When the government condemns property, they must show that they have a legitimate public purpose for the property and that the specific piece of land is necessary for their public purpose. If either of those things aren't proven by the government, it is unable to exercise eminent domain power. In the event the government is overreaching and tries to acquire more land than is needed for the public purpose project, the taking will fail unless the government demonstrates why it is necessary to have the specific land that it is trying to acquire.

Even assuming that a public purpose exists the process is costly. Not only does the municipality have to pay for the land taken, it will pay the costs and attorney fees not only for its lawyer, but such fees and costs of the property owner.

The Florida Supreme Court, *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 241 (Fla. 2001), has held that the "term 'public purpose' does not mean simply that the land is used for a specific public function, i.e. a road or other right of way. Rather, the concept of public purpose must be read more broadly to include projects which benefit the state in a tangible, foreseeable way." Hence a valid "public purpose" does not necessarily entail putting the condemned property to public use. However, the concept is limited in that **"eminent domain cannot be employed to take private property for a predominantly private use."** *Baycol, Inc. v. Downtown Dev. Auth.*, 315 So. 2d 451, 455 (Fla. 1975).

In this particular instance it might be advisable for the affected property owner to negotiate some type of property purchase or easement arrangement with another property owner who has property abutting the FDOT right of way in an area where FDOT will allow a new cut.

ORDINANCE NO. 2016-02

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; REPEALING SECTION 13-38 (C) RELATING TO VARIANCES AUTHORIZED BY THE BOARD OF ADJUSTMENT; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS; PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 13-38 (c) of the Code of Ordinances of the Town of Malabar is hereby deleted.

Section 2. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida and it is hereby provided that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

Section 3. Should any Section, Clause, or Provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the remaining provisions or parts of this Ordinance.

Section 4. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

Section 5. This Ordinance shall become effective immediately upon its adoption.

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

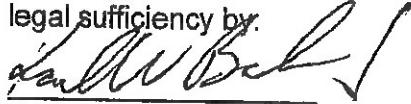
Council Member Grant Ball	Aye
Council Member Brian Vail	Aye
Council Member Don Krieger	Aye
Council Member Dick Korn	Aye
Council Member Richard Kohler	Aye

This ordinance was then declared to be duly passed and adopted this 3rd day of Oct, 2016.

TOWN OF MALABAR
Phillip R Crews
Mayor Phillip R. Crews, Council Chair

First Reading 7/18/16
Second Reading 10/03/16

Approved as to form and
legal sufficiency by:



Karl W. Bohne, Jr.
Town Attorney

ATTEST:



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

- (2) However, should such principal structure not be located wholly on one (1) lot, or should the owner desire to construct accessory uses, ponds or outbuildings (accessory to the principal structure) on the contiguous lot, then the local street/road shall be improved through the furthest boundary on which such accessory building to be constructed.

(c) The board of adjustment may only grant a variance to the requirements of subsection (b)(1) and (2). Notwithstanding the authority granted to the board of adjustment in section 1-12 of the Town of Malabar Land Development code the below stated procedures shall in all respects be utilized for a variance to subsection (b)(1) and (2). In order to authorize a variance under this section, the board of adjustment must find the following:

- (1) That special conditions and circumstances exist and that the presence of which would make complying with subsection 13-38(b)(1) or (2) unreasonable. Financial or economic reasons, conditions or circumstances shall not be grounds for a variance under this section;
 - (2) The special conditions and circumstances are not caused in any way by the owner or applicant;
 - (3) That such variances will not be injurious or detrimental to the public welfare;
 - (4) That the variance granted is the minimum variance that will make possible the reasonable use of the land;
 - (5) As a condition to the issuance of a variance the owner of the property shall dedicate the right of way required by section 13-39 of the code through the furthest boundary of the lot of record on which a principal structure or accessory structure is to be constructed. The owner shall also execute an agreement in recordable form with the town that binds the owner and his/her successors in interest to pay for the proportionate share of completion of the road through the furthest boundary of the lot of record on which a principal structure or accessory structure is constructed in the event the road is completed by another. The board of adjustment may impose additional reasonable conditions and safeguards that it deems appropriate;
 - (6) The board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.
- (Ord. No. 01-01, § 1-3, 2-5-01; Ord. No. 03-01, § 2, 2-24-03; Ord. No. 03-05, § 1, 6-16-03; Ord. No. 07-11, § 1, 7-16-07; Ord. No. 08-07, § 1, 6-16-08)

Sec. 13-39. Precondition to issuance of building permit—Dedication of sufficient right-of-way.

Except as provided for in section 13-39.1, as a precondition for the issuance of any building permit for a permitted structure on property that abuts an unimproved or unaccepted right-of-way within the Town of Malabar, Brevard County, Florida, the owner of the property

COPY

AGENDA REQUEST

8

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

APPLICATION FOR BUILDING PERMIT

Florida Building Code Edition in effect: 2017
Florida Electrical Code Edition in effect: 2017
Florida Fire Prevention Code Edition in effect: 2015

PROPERTY INFORMATION

TWP: 29 RNG: 37 SEC: 01 SUB #: BLK/PAR: LOT:
Site Address: 2125 Howell Lane Malabar 32950
Owner's Name: Cowlin Anthony & Annie 321-863-2882
Owner's Address: 2125 Howell Lane Malabar 32950

CONTRACTOR'S INFORMATION (APPLICANT)

Qualifier Name: Charney Charles CBL060732
Company Name: CCB Heating & Air
Address: 220 Interstate CT Palm Bay 32909
Fax #: 321-952-5430 Phone #: 321-440-5438
E-Mail: ccharney@charneyfl.com

PROJECT INFORMATION

Residential Commercial Site Plan #:
Describe Work To Be Done: Repair from Fire Damage

Cost of Project: \$ 90,000 Proposed Sq. Ft.: 1627
of housing units 1 # of new bedrooms 3 Master Plan #:
Sanitary Service: Sewer Service Potable Water Service: Public or Private Water
Septic Well

SUBCONTRACTOR INFORMATION:

Table with 3 columns: Contractor Name, License #, Phone. Rows include Plumbing Contractor (Certified Plumbing), Electrical Contractor (Kraigok Electric), HVAC Contractor (Florida Breeze), Roofing Contractor (Florida Native Roofing), and Specialty Contractor.

To: Malabar Administrator Matthew Stinnett
From: Karl W. Bohne, Jr., Malabar Town Attorney
RE: Special Assessment for Fire Protection

Date: April 22, 2019

The issue regarding special assessments for fire protection has been determined by the Florida Supreme Court in *Morris v. City of Cape Coral*.

In 2013, the City of Cape Coral issued a Special Assessment to provide fire protection services. The City of Cape Coral passed an ordinance levying a special assessment against all real property in the city, both developed and undeveloped. The assessment has two tiers—one for all property and a second that applies only to developed property.

Scott Morris and other property owners (collectively referred to as either “Morris” or “Property Owners”) appealed the assessment validation, arguing that the two-tier methodology is arbitrary, that the assessment violates existing law. The City issued bonds to fund the assessments; however, Malabar would not be issuing bonds but the courts analysis still provides us guidance.

In 2013, the City prepared a study relating to a non-ad valorem assessment to fund the City’s fire protection services. The findings in a report dated June 10, 2013, were accepted by the City. The report recommended a two-tier assessment, reasoning that all parcels in the city benefited from fire protection services and that developed property received an added benefit of protection from losses. The calculated costs were based upon the costs to maintain the facilities, equipment, and personnel necessary to provide fire protection services on a 24-hour-per-day, 365 days-per-year basis to all parcels in the city (exclusive of Emergency Medical Services costs). These costs represented seventy percent of the total fire protection services cost and were to be evenly distributed among all parcels. The costs for fuel, equipment maintenance, actual response to a fire, and other related operations were associated with protection from loss of structures. The trial court ruled in favor of the City during the validation trial. An appeal followed.

The Supreme Court stated that valid special assessment must meet two requirements: (1) the property assessed must derive a special benefit from the service provided; and (2) the assessment must be fairly and reasonably apportioned according to the benefits received. These two prongs both constitute questions of fact for a legislative body rather than the judiciary. The standard to be applied to both prongs is that the legislative findings should be upheld unless the determination is arbitrary. Even an unpopular decision, when made correctly, must be upheld.

The Court made a preliminary determination that there is no question that the City had the legal authority to levy the special assessment. Further, the Court stated that it has previously upheld the validity of special assessments to fund fire protection services. The Court reiterated that fire protection services funded by a special assessment did provide a special benefit. In evaluating whether a special benefit is conferred to property by the services for which the assessment is imposed, the test is not whether the services confer a “unique” benefit or are different in type or degree from the benefit provided to the community as a whole; rather, the test is whether there is a “logical relationship” between the services provided and the benefit to real property. The Court held that fire protection services do, at a minimum, specially benefit real

property by providing for lower insurance premiums and enhancing the value of the property. Thus, there is a 'logical between the services provided and the benefit to real property."

The issue therefore was whether the assessment was fairly and reasonably apportioned according to the benefits received. To meet this prong the City determined that:

"It is hereby ascertained and declared that the Fire Protection services, facilities, and programs provide a special benefit to property because Fire Protection services possess a logical relationship to the use and enjoyment of property by: (1) protecting the value and integrity of the improvements, structures, and unimproved land through the provision of available Fire Protection services; (2) protecting the life and safety of intended occupants in the use and enjoyment of property; (3) lowering the cost of fire insurance by the presence of a professional and comprehensive Fire Protection program within the City and limiting the potential financial liability for uninsured or underinsured properties; and (4) containing and extinguishing the spread of fire incidents occurring on property, including but not limited to unimproved property, with the potential to spread and endanger the structures and occupants of property."

The City's experts determined that all parcels in the City received a special benefit from the City's fire protection services and facilities. The response-readiness of the fire department benefitted all parcels by raising property value and marketability, limiting liability by containing fire and preventing its spread to other parcels, ensuring immediate response, and heightening the use and enjoyment of all properties.

Morris then argued that the Tier 1 and Tier 2 assessment is not properly apportioned. The Court stated that "To be legal, special assessments must be directly proportionate to the benefits to the property upon which they are levied and this may not be inferred from a situation where all property in a district is assessed for the benefit of the whole on the theory that individual parcels are peculiarly benefited in the ratio that the assessed value of each bears to the total value of all property in the district." The assessment cannot be in excess of the proportional benefits. The proportional benefits cannot be calculated by the ratio of the value of the assessed property against the value of all property. The mere fact that some property is assessed on an area basis, and other property is assessed at a flat rate basis, does not in itself establish the invalidity of the special assessment. The City has attempted to apportion the costs based on both the general availability of fire protection services to everyone (Tier 1) and the additional benefit of improved property owners of protecting structures from damage (Tier 2).

The Court found that the City's methodology reasonably relates to the additional benefits received by improved properties. The formula contemplates that each improved parcel benefits differently because the cost to replace the respective structure differs. The use of the property appraiser's structure value is reasonable because the property appraiser is statutorily required to use a replacement cost to determine this value. The methodology at issue here was found to be "valid, non-arbitrary and considered established insofar as the [opposing parties] failed to present any competent, persuasive evidence to dispute or call into reasonable question [the court's] findings and determinations." A review of the record supports the trial court's determination.

So, with the right findings by the Town Council there is support in the case law for a Town Special Assessment for Fire protection

Re: Public Notices on ToM.org?

Steve Rivet

Mon 4/29/2019 10:14 AM

To: Dawn Danielson <dawn.danielson@gmail.com>;

Cc: Debby Franklin <townclerk@townofmalabar.org>; Matt Stinnett <mstinnetti@townofmalabar.org>;

AGENDA REQUEST 10

Dawn,

I'll bring it up for discussion. I would like to hear Mr. Bohne's, staff's, and the other council members' thoughts on this before committing to an ordinance.

Matt, Debby - FYI

Regards,
Steve

From: Dawn Danielson <dawn.danielson@gmail.com>
Sent: Sunday, April 28, 2019 12:20 PM
To: Steve Rivet
Cc: Dawn Danielson
Subject: Public Notices on ToM.org?

Hello Steve,

In our Town Code, "Section 1-12.6. - Procedures for public hearings." says "Due public notice shall be provided pursuant to § 166.041 F.S. ." At the request of several residents, would you kindly submit an Ordinance to modify that to include the words " as well as published on the TownofMalabar.org website." ?



Thank you for your consideration.
Sincerely,
Dawn