



REGULAR TOWN COUNCIL MEETING

Monday, March 15, 2021 at 7:30 pm

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

a. Approve Minutes of Regular Town Council Meeting of 03/01/2021

Exhibit: Agenda Report Number 4a

Attachments:

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

5. ATTORNEY REPORT

6. STAFF REPORTS

a. Manager

Exhibit: Agenda Report Number 6a Revised 03/10/2021 & Agenda Report Number 6a(1) Revised 03/15/2021

Attachments:

- **Agenda Report Number 6a Revised** (Agenda_Report_Number_6a_Revised.pdf)
- **Agenda Report Number 6a(1)** (Agenda_Report_Number_6a_1_.pdf)

b. Clerk

Exhibit: Agenda Report Number 6b

Attachments:

- **Agenda Report Number 6b** (Agenda_Report_Number_6b.pdf)

c. Fire Chief

Exhibit: Agenda Report Number 6c

Attachments:

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

d. B.C.S.O. Report - Written

Exhibit: Agenda Report Number 6d

Attachments:

- **Agenda Report Number 6d** (Agenda_Report_Number_6d.xlsx)

7. PUBLIC COMMENTS

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

Five (5) Minute Limit per Speaker

8. PUBLIC HEARINGS: 2

- a. Road Improvement Waiver Request - unimproved right-of-way in line with Beekeeper ROW and Old Mission ROW running west from Corey Road - Tabled from May 6, 2019; Applicant Mr. Chris Thomas.**

Exhibit: Agenda Report Number 8a

Attachments:

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

- b. Amend Comprehensive Plan and Code re: Maximum Building Coverage (MBC) in Residential/Limited Commercial (R/LC) to permit 20% coverage (Ordinance 2021-02)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S COMPREHENSIVE PLAN FUTURE LAND USE ELEMENT; PROVIDING FOR A TEXT CHANGE TO THE PERMITTED MAXIMUM BUILDING COVERAGE IN THE RESIDENTIAL AND LIMITED COMMERCIAL (R/LC) MIXED USE DESIGNATION; PROVIDING FOR A SIMILAR CHANGE IN THE LAND DEVELOPMENT CODE DELETING THE MAXIMUM BUILDING COVERAGE OF 4,00SF AND UTILIZING THE TWENTY PERCENT COVERAGE AS STATED IN TABLE 1-3.3(A); PROVIDING FOR TRANSMISSION TO THE FLORIDA STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report Number 8b

Attachments:

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

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

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

10. ACTION ITEMS

ORDINANCES:0

RESOLUTIONS:0

MISCELLANEOUS:1

- a. Approve Cancellation of RTCM April 5, 2021 or set an Alternate Date**

Exhibit: Agenda Report Number 10a

Attachments:

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

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

11. DISCUSSION/POSSIBLE ACTION

a. Code Enforcement/Compliance Discussion (White & Scardino)

Agenda Report Number 11a

Attachments:

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

b. Home Business Tax Receipt Regulations (White & Scardino)

Exhibit: Agenda Report Number 11b

Attachments:

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

c. Land Development Tree Preservation (Scardino)

Exhibit: Agenda Report Number 11c

Attachments:

- **Agenda Report Number 11c** (Agenda_Report_Number_11c.pdf)

12. PUBLIC COMMENTS

General Items (Speaker Card Required)

13. REPORTS - MAYOR AND COUNCIL MEMBERS

14. ANNOUNCEMENTS

(1) Vacancy on the Board of Adjustments; (2) Vacancies on the Trails and Greenways Committee

15. ADJOURNMENT

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

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

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Agenda published on
03/09/2021 at 2:01 PM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.
Meeting Date: March 15, 2021

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

SUBJECT: Consent Agenda

BACKGROUND/HISTORY:

4.a. Town Council Regular Meeting Minutes – 03/01/2021

ATTACHMENTS:

a. Draft Minutes of 03/01/2021

ACTION OPTIONS:

Council Action on Consent Agenda

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

MARCH 01, 2021 7:30 PM

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

1. CALL TO ORDER:

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

2. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

MARISA ACQUAVIVA

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE

TOWN MANAGER: (ITM)

LISA MORRELL

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

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

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 2/01/2021

4.b. Continuing Engineering Services with EDC and Kimley-Horn

MOTION: CM Rivet / CM Vail to approve consent agenda. VOTE: All Ayes.

5. BCSO REPORT: not available yet

6. ATTORNEY REPORT: Staff needs direction from Council on 1870 Hall Road. SM found three violations and gave until 7/17/2020 for compliance. Applicant has not complied, and those fines today are about 85K. Property is valued at 30K with taxes still owed for 2020 of about \$400. PA shows address in south FL. Atty recommendation is to send the notice of intent to close the lien. Court is not going to support an 85K lien on a property valued at 25K. The goal is compliance. Give him 15 days to cure. CM Scardino asked about sending a process server. Try and minimize costs. Once the 15 days lapses, then he will be served with a process server. Council supports sending this notice. Not here to make money. Atty also noted that one of the many bills going through the Legislature is HB 403 and it would preempt local govt from regulating home businesses.

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: written and summarized by Mayor. Focus on the Eagle Nest Trailhead improvements on south Marie Street adjacent to Jordan Scrub Sanctuary.

7.b. Park & Recreation Board: Eric Chair on Park Board. Also written report. Adding a parks and rec page on website. Go live later this month. Amenities and notices. Working with ITM on sign replacements. Most need to be replaced. Talked to facility next door and they use a plastic. Save money by having us paint signs. Passed out the survey they had in mind. Then we can add the survey to the residents on the amenities they would like to see. We have money is reserves to pay for the new equipment.

7.c. P&Z Board: Mayor said they are working on the RLC with 20% instead of the MBC of 4,000sf.

8. STAFF REPORTS:

8.a. Town Manager – written in package. Also went over some other items. Cares Act reimbursement #2 has not only been approved but we received the funds today, in full for our request. Also, SB 1494 allows either Governor or local government authority to enact the local emergency and need to use distance meeting procedures. Need to create and adopt processes and procedures to provide guidance. KSM sent wrong crew but that is being corrected. Waiting on field reports. Goodson will do the earth work and paving when ready.

No date yet. Had internal training with staff on how to update the stormwater masterplan online. Will have field training. We will be able to use that overlay to show zoning and FLUM. Also looked at Town Engineer invoices for last year. His 9-year-old contract. May want to look at building services contract, an inspector, and plan reviewer. Uptick them or reduce them as necessary. Currently have PT emp from 3-5 or 6pm. Questions on the graph. Fill was delivered for north Corey road to slightly improve that. Springfest is upcoming. The goal of the 50/50 raffle for funds to go to playground equipment. Met with Country Cove and will be doing some SW work in the area. Will send out door knockers first. Also held a virtual community meeting last week regarding the homeowners on Waring that are interested in SA for paving and had 10 participants. Steve asked about how many roads requesting paving are in que. Waring will make three.

Two PW members will be re-certifying their SW certification as required by the Town's NPDES permit. Sink hole on Rocky Point Road has also been fixed.

8.b. PW – written

8.c. Clerk – Reminder for *Fall in Love with Springfest* on Saturday March 20, 2021. It will run from 9am to 1pm. Richard is coordinating with Kenny Schofield of Dolphin Auto for the car show and we will have food trucks and local arts and craft vendors. We are also offering free space to all active Malabar BTR holders. Richard and Kenny would like to know if any of Council would be interested in judging the categories he listed in his memo to you such as best old car, best old GM, Ford etc., best stock car and best modified. In addition to those 8 categories, Dolphin Auto will be presenting three other awards. Please contact Richard if you are interested.

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. (Speaker Card is Required) Five (5) Minute Limit

10. PUBLIC HEARINGS: 3

10.a. Amend Signage Code – Ordinance 2021-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTION 1-19.18 OF THE TOWN CODE OF ORDINANCES, LAND DEVELOPMENT CODE, ARTICLE XIX - SIGNAGE RELATING TO DISTRICT SIGN REGULATIONS; AMENDING THE PROVISIONS OF TABLE 1-19.18 OF THE TOWN CODE RELATING TO THE MAXIMUM AREA PERMITTED IN RESIDENTIAL AND NON-RESIDENTIAL ZONING DISTRICTS PERTAINING TO GENERAL OUTDOOR ADVERTISING; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 10.a.

Ord read by title only.

Public Hearing opened. None. Public Hearing closed.

Chair asked staff: as expressed in the agenda report.

MOTION: CM Vail / CM Acquiviva to adopt Ord 2021-01.

Discussion: none

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

10.b. Final Plat for 'Twin Lakes' Subdivision

Final Plat Approval for Twin Lakes Subdivision, consisting of 16 homesites in Rural Residential (RR-65) Zoning located on the south side of Malabar Road, east of Weber Road more fully described as Lot 26 & part of Lot 25 of Pb 1 Pg 165 as desc in Orb 8065 Pg 1488 exc Orb 8313 Pg 1942. Applicant: Malcom Kirschenbaum, Weber Woods LLC, represented by Mr. Brian Daigle of MBV Engineering, Inc. This request was heard at Planning and Zoning on 2/24/2021 and they voted 5 to 0 to recommend Council approval.

Exhibit: Agenda Report No. 10.b.

Chair asked Clerk to read title of PH.

Chair asked applicant to present:

Owner Mr. Malcolm Kirschenbaum introduced himself and Mr. Brian Daigle. No questions.

Public Hearing opened. None. Public Hearing closed.

Chair asked staff: as expressed in the agenda report and P&Z Board recommendation.

MOTION: CM Rivet / CM Acquaviva to approve Final Plat of Twin Lakes SD. Discussion: none

VOTE: All Ayes. Motion carried 5 to 0.

10.c. Road Improvement Waiver Request – right-of-way known as Beekeeper Lane – tabled from February 1, 2021 to this date; applicant Adam Hayward**Exhibit: Agenda Report No. 10.c.**

Chair asked Council for motion to remove from table.

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

Chair asked Clerk to read title of PH continued from 2/1/2021.

Mr. Adam Hayward property owner of parcel 295 located in Township 29, Range 37, Section 12 with no address assigned on Beekeeper Lane, approximately 1200 feet east of Corey Road is seeking a Road Improvement Waiver to the road improvement requirements referenced in Chapter 13 of the Malabar Code.

Chair called on applicant. Mr. Hayward summarized previous meeting discussions. Since then he has received estimated costs on road improvements using the Town code. He got an estimate of 290K and then the required bond amount is the same amount as the improvement so the total would be over 500K. Plus it would take a year of time to get the Army Corp of Engineer permit. The first parcel has already been developed so would not be required to participate in the road pay back. The other parcel fronting Corey would also not be required because they have access from Corey Road. He would like the Town to build the road. He is not trying to get away with not paying or not improving. The Town's process is time consuming, and extremely expensive. Also parcel 291 will not dedicate. Also, the existing parcel developed would be harmed. He would enter into a contract that would attach to the deed and travel with the property it should sell before the rest of the road is developed.

Open PH – none. Close PH

Chair asked Staff: they have provided a table of the road improvement options available in the 2nd page of the agenda item 10.c. package. ITM Lisa explained the authority of the granting of the waiver lies with Council. The question of ROW dedication of Parcel 291 was answered with the email from the applicant; property owner said no.

CM White had hoped ITM and applicant could come up with some agreement. He stated if you buy property in Grant-Valkaria you are still required to improve the road. He is sorry but that is the case here with our Code. Property on an unaccepted road is cheaper. ITM Lisa met with TM Jason Mahaney of G-V regarding another roadway and learned that G-V has adopted a moratorium on dirt roads and is requiring paved roads.

Chair asked for motion.

MOTION: CM Rivet / CM Scardino to approve waiver.

Atty stated there should be conditions as applicant is not offering anything new. Atty suggested a recordable agreement should be included. CM Rivet said improve as B3.

Discussion: Council continued discussion on Town's requirements as described in the Exhibits. CM Rivet said we can work with him and make progress by allowing him to improve to Exhibit B6 standard and that moves us in the correct direction and could be an incentive to future development. CM Vail said as it stands now it is 70 ft.

Clerk Franklin explained the Town of Malabar's Comprehensive Plan and Land Development Regulations define Beekeeper Lane as a *minor collector* roadway within a 70-foot right-of-way. If Council is considering a road waiver, Exhibit 3 and Exhibit 4 would be the more applicable as Exhibit B-5 and B-6, adopted by Council via a resolution is intended for local lanes with few parcels and not connecting to cross streets.

Chair asked applicant to comment.

The imposition of the ROW improvement on the first parcel would encroach into their driveway. CM Vail also said it could also be bumped to the south. His decision is not going to be based on imposition of the driveway.

CM Vail said Council could allow improvement per the Exhibit B4 for the 50' area and then make an adjustment to the Exhibit B3 for the area that there is ROW lacking. That would be holding firm to our Code. He would support a B4 where it can and a B3 in the other areas. When development comes there is more development. He feels it is prudent to stand on that standard.

CM Scardino asked if approving this would set a precedent. Atty said Council has final authority. CM White proposed having applicant build to Exhibit B4 where it can be built to the narrow section and then do a driveway from that point. CM Vail said if that is done, we are compromising our code. When those people want to build on 291 then they will have to dedicate and build to the Exhibit B4 standard. CM Vail said drainage is critical and it should be done to Exhibit B4 where it can be and the rest adjacent to Parcel 291 to Exhibit B3. CM Rivet said then it won't get built. CM Acquaviva said it should be done per code.

MOTION: CM Rivet / CM Scardino to approve waiver with condition it be done as Exhibit B-3 with a recordable cost share agreement running with the land, to hold owner of parcel 295 responsible for the future cost share and to allow a reduced improvement width adjacent to parcel 291 where there is not sufficient ROW where it is only 20 feet.

VOTE: Ayes, 4; Nays, 1 (CM Vail). Motion carried 4 to 1.

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

12. ACTION ITEMS:

ORDINANCES for FIRST READING: 0

RESOLUTIONS: 1

12.a. Resolution 17-2020 – Extend or Sunset Face Covering Policy

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

Exhibit:

Agenda Report No. 12.a.

MOTION: CM Vail / CM White to extend policy to October 5, 2021.

Discussion: Council discussion on following CDC guidelines. Attorney said Council sets policy. CM Rivet said staff is looking for guidance. **VOTE: All Ayes.**

MISCELLANEOUS: 1**12.b. Authorization to submit Malabar Code of Ordinances to Municode for a Legal Review Exhibit: Agenda Report No. 12.b.**

Chair asked staff: Clerk said as expressed in the agenda report. Chair asked ITM. Lisa said this would provide an outside agency with legal experts in all fields to review the Code and the Land Development Regulations and provide analysis. Attorney Bohne said he strongly supports this request. He did it for Indian Harbor Beach and it is too much for one person and probably cost more. He also said over time we adopt ordinances and don't realize the references weren't also updated. Lisa said to have fresh eyes reviewing it was also a benefit.

MOTION: CM Vail / CM Rivet to authorize expenditure for legal review of Code and LDC by Municode as submitted. Discussion: none. VOTE: All Ayes.

DISCUSSION/POSSIBLE ACTION: 0

13. PUBLIC COMMENTS: General Items (Speaker Card Required) None:

14. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: nothing

CM Vail: He read his position regarding the code requirement for road improvement. He strongly supports property owners' rights to develop their land consistent with zoning and land use. However, allowing said improvements with substandard road improvements has historically and currently created resident and emergency access issues as well as drainage issues. This inadvertently costs the taxpayers that could be prevented by adhering to the road improvement standards. Some waivers are inevitable due to lack of available ROW, but the Town should not compromise on emergency access and drainage. It is up to Council to enforce the standards when the ROW is available. Doing otherwise puts an undo obligation on future ROW improvements and is not helping anyone.

CM Rivet: nothing

CM White: referenced the anonymous complaint mailed to all of Council regarding home business operating on Flashy Lane. When he started on Council, he asked TA Doug Hoyt about how he enforced codes. Hoyt said we have reactive enforcement. Which means you don't have any enforcement. You have businesses that don't meet the home business rules intended for a family business but if no one is complaining about them nothing is done. But then you have others that are complained about. He really does think we need to enforce for what it takes to do business in a residential neighborhood. We have some residents that have heavy manufacturing going on. Also have a trucking firm operating in residential areas. Re: SCLC business. HB 219/SB522 short term rentals. The State has already pre-empted municipalities from governing short-term rentals. This new bill would pre-empt local govt from regulating family home businesses. Short term housing rentals is not a residential use; these aren't new neighbors, it is a commercial business with short term stays by tourists. He called Sen Mayfield and asked her to vote no. Both bills have already passed the committee hearings.

Regarding the Malabar Home Business Tax rules, he would like to see this on a future agenda on how we are going to handle the existing and non-compliant persons.

CM Scardino: re: Twin Lakes SD, it surprised him about how many of the trees were cleared. Council discussion on the Town's strong code supporting tree preservation of protected trees. ITM Lisa then explained the SD covenants and its requirements on what must be left, and she also explained the tree preservation requirements on the developer and what staff had already done before it got to this point. It was also discussed again at the recent P&Z board. She has had discussions with Maronda on their request of how many trees could be removed and she provided the code and requirement for replacement or payment into the tree preservation fund. She agreed with Council that more information could be provided on Malabar tree preservation rules on the website, Facebook, etc. The Town takes a lot of calls on this topic.

Mayor: nothing

15. **ANNOUNCEMENTS:** Openings on T&G Committee.
16. **ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 9:10 P.M.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 03/15/2021

DRAFT

TOWN OF MALABAR

COUNCIL MEETING

Staff Report

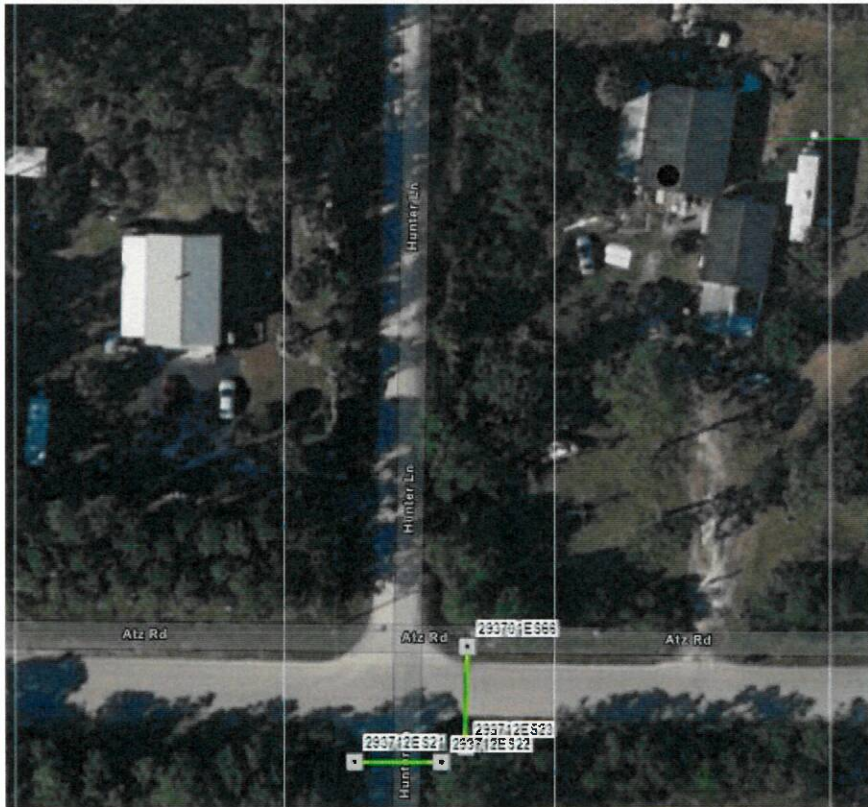
Meeting Date: March 15, 2020

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Interim Town Manager Report

Hunter Lane Paving

As of March 4, the geotechnical reports were completed, and result submitted to The Town. The results of the two geotechnical tests which included 8 samples collected from the existing roadway of Hunter Lane are as follows: The Lime Base Rock (LBR) exceeded the standard of 40 with a result of 89. The compaction tests of 8 locations failed to meet the standard proctor value of 122.8 with results ranging in values of lowest value of 114.9 to the highest reported value of 120.1. These results were provided to the Town Engineer via email on the same day for inclusion of the task in progress to conclude the design, scopes of work, and a bill of materials specifications required to submit for a proposal from the paving contractor to achieve the Super Pave (SP- 9.5) type asphalt improvement of Hunter Lane to include two stormwater related activities of a east-west road crossing pipe at Atz Road and the addition of one driveway culvert at parcel id: 29-37-01-00-519.



ATZ Road – Harris Emergency Evacuation Access

On January 28th a dialogue was requested from Michael McKnight, Program Manager for Environmentally Endangered Lands Program of Brevard County and John Brooker, Senior Principal Industrial Security Specialist for Business Operations Integration & Crisis Management with L3Harris Technologies related to an emergency response plan for employees and visitors of the L3 Harris facility located on Jordan Boulevard L3. This discussion surrounds a minimal improvement to access path and gates only during an emergency or a planned emergency drill. This would not be a permanent or day-today use access road to Atz Road/Marie Street.



SCTPO/TAC

On Monday March 9th, The Technical Advisory Committee of the Space Coasts Transportation Planning Organization met in person in Rockledge at the Collaboration Center. March is Florida Bicycle Month with digital outreach and some in person pop-up activities posted from the SCTPO and as proclaimed by Governor. DeSantis.

MPAOC Legislation Newsletter is attached for Town Council's Information of proposed State Legislation currently active in the session related to transportation. (file: TAC LEG 10-22.PDF)

The SCTPO offers Transportation Thursdays webinars – April 15th from 10-11 am, Join SCTPO Senior Transportation Planner, Sarah Kraum, and special guest speakers during a FREE, #TransportationThursdays webinar to learn more about Brevard's best trails, the regional trail system, trail planning, and how trails spark economic development by registering online. (file: TAC Trail Blazing.PDF)

Notably, there was a presentation from Kittleson & Associates performing the Minton Road Feasibility Study. The purpose of the project was to assess the need and feasibility of widening the road, address congestion and safety issues, and create a more multi-modal corridor. The corridor assessed is from Palm Bay Road to US 192; is maintained by the County and within the West Melbourne city limits. It includes two bus routes, nine public and private schools, a variety of land uses, parks, and access to Promise in Brevard, a housing facility for special needs adults. This project is in the planning phase with a cost estimation of 13,580,000 whereas the design, right-of-way, and construction phases are unfunded. Commissioner Zonka's office has requested a meeting on March 17th, 2021 to discuss allocating "additional funds to the Minton Road Median project 1232/270970/5650000 IO#6936309. See attached available funds \$835,330 as of 12/31/20, and per the construction estimate provided by Bruce another \$20,000 needs to be allocated" with the South Mainland TIF members. (file: TAC Minton.PDF)

An updated presentation on the ACE (Alternative Corridor Evaluation) study was also present for the St John's Heritage Parkway connection from Babcock west to Malabar Road, also unfunded for the next phase, PD&E (Planning, Design, & Environmental) Study.

FDOT provided a written update of projects countywide. And Space Area Transit showcased contactless payment for ridership and real-time mapping of buses in transit and schedule of arrival for next stop for public use. Next Meeting is May 10th.

Upcoming IAFF 2446 Union Negotiations

Vice -President Supervisors Unit / Malabar Unit Representative, David Ginsburg, of IAFF Local 2446 - Palm Bay Professional Firefighters Union contacted my office on March 8th, regarding the upcoming negotiations with Town for the union contract expiring November 4, 2021 to discuss and assist the town with our upcoming budgeting process and planning for fiscal year 21/22. A timeframe has yet to be established, awaiting Mr. Stinnett's response for participation and any relevant information pertaining to the topic.

Health Insurance & Benefits Review

In preparation of the budgeting process and review of the Employee Health Insurance Plans, I have been in contact and discussions with Hugh Cotton, broker of record, for the Town's health plans(s) contracts with Health First. This contract has a total value of \$228,000, apportioned as \$180K paid by the Town and 48K paid by employees.

The town offers two health plan options, Gold HMO 80 5574 and Platinum POS 80 5593 Plans. Major network coverage in these plans the Gold offers in network coverage only while the Platinum affords out of network service per a schedule. The Gold plan offers a lower monthly premium and higher out of pocket expenses; ex. calendar year deductible per individual/family is \$8,150/16,300. The Platinum has a higher monthly premium but a lower maximum out of pocket per individual/family, \$1,800/\$3,600 In network and \$3,600/\$7200 out of network.

The Federal Affordable Care Act is not applicable to our County/State and therefore the Town is currently subject to the small business open market for health care insurance options and coverage for its employees. The Town does contribute up 80% of an individual employee's portion of the monthly premium.

A survey is in development to inquire with employees to respond for the current plan offering and meeting their needs for the current healthcare plan, participation and level, as well as options of that the Town could consider for plan offerings, wellness programs, employee assistance, or other items not offered that would be desirable and value added as an employee benefit for healthcare.

Building Services Contracts

Currently reviewing other agency contracts recently awarded for services, there are six (6) Plan Review and Inspector Services to choose to piggyback. Staff is contacting all six for interest of services to the Town with levels of service expectations needs. The contractors have awarded proposal of the following six position services:

Service	Per Hour Range
Building Inspector	\$70-\$120
Plan Examiner	\$75-\$120
Building Official	\$100-\$150
Fire Inspector	\$80-\$110
Fire Examiner	\$90-\$110
Permit Technician	\$45-\$55



The Florida Metropolitan Planning Organization Advisory Council

*Commissioner Nick Maddox
Chair*

MPOAC Legislative Newsletter 02/20/2021

Overview

Greetings everyone!! This week wrapped up the pre-session weeks of committee meetings and we are on to the regular session which begins March 02, 2021. Yes, your calendar is not deceiving you, there is a one-week break in between and thus there will not be a newsletter next Saturday. Also, we will not have the meeting schedule for committees during the first week of regular session until about 4 or 5 days before the committees are actually meeting, so no updates to that section of the newsletter this week. We have removed from the newsletter the list of pre-session weeks since that data is now in the past. With the start of regular session, now the process will begin to heat up and we are off to the races. Let's dive into what has happened this week around our capitol.

Senate President Wilton Simpson stated his support for the M-CORES legislation and the associated projects. This is interesting in that an earlier MPOAC newsletter shared with you that a pair of bills had been filed to undo the M-CORES legislation. We now know that the Senate version of that repeal bill is not going to be heard in committee.

The mid-block crossing bills are back again this year. This year's bills are similar to last year, the mid-block crossings with flashing yellow lights will be a problem for all government entities in Florida if the bills are passed. The bills originate from a horrible tragedy that occurred and the intent is to protect any other family from having to endure the pain and heartbreak of losing a loved one. That my friends is a very noble cause, hats off for taking on a bill to prevent another loss of life. The fear among transportation professionals last year was that the content of the bill would actually make mid-block pedestrian crossings more dangerous. Expect this set of bills to be modified during session and expect that Representative Fine will push this bill aggressively. The incident that brought this bill forward occurred in his district and he is determined to help this family. Rep Fine has a huge heart and that is admirable.

Representative Andrade advanced his Transportation bill through the House Tourism, Infrastructure & Energy Subcommittee. It took some explaining, particularly when it came to allowing blue flashing lights on large pieces of construction equipment, but he expertly handled each question and got the vote to advance his bill. Each year Representative Andrade has brought forward a transportation bill and our MPO community has noticed. It is great to have legislators that have an interest in transportation, thank you Representative Andrade.

Interesting fact, during the last election Florida had 4.8 Million votes cast by mail. To say that COVID had nothing to do with elevating this number would be silly of me, but we have to admit that is an impressive number. The legislature is looking at changes to the vote by mail requirements, the proposed change would require a voter to request a vote by mail ballot for each election rather than allowing for a standing order for a

mail ballot each election. Let's see how that goes over with voters, might see some fireworks. I will bring the lemonade and popcorn.

The legislature is looking seriously at passing legislation to pass business liability protections related to COVID, this is not new news to you I am sure. Surprisingly the bill stalled in a Senate Committee this week. The details help though. Senator Brandes, the Senate Bill sponsor, was held up in another committee meeting. Expect to see it in committee on March 2nd, which is also the first day of regular session.

The E-fairness bill passed Senate Finance and Tax Committee this week. The bill would require online retailers to collect sales tax and remit it to Florida. Florida is one of the rare states that does not force online retailers to collect sales tax and local brick-and-mortar retailers have been asking for this legislation, so have several powerful groups in Florida. Revenue estimates point to local sales tax collections increasing by \$229.5M. The combined impact to both state and local revenues would be about \$1.3B. That is a lot of new money available to the state and local governments. The bill sponsor in the Senate, Senator Gruters, has vowed to make this bill revenue neutral by offering tax relief elsewhere.

In other news, the bill repealing the Constitutional Revision Commission passed the final committee stop and will be ready to be heard on the full Senate floor.

A pair of bills I want to bring to your attention this week are titled Growth Management. The companion bills are HB 59 and SB 496. They are largely out of the realm of transportation except for a section that details how the Florida DOT will get rid of surplus land. The bill requires that if Florida DOT wishes to get rid of land that is no longer needed, they must first make an offer to sell at fair market value to the owner that the land was originally acquired from and that previous owner has 30 days to accept. This does not account for owners that cannot be located due to any variety of circumstances. Why bring this up in the MPOAC Legislative Newsletter? There is a larger issue for our members, the implication to counties and municipalities is that when the Florida DOT disposes of unneeded land it may not be available to local units of government. There are somewhat regular occurrences where the Florida DOT transfers title to property to a county, municipality or other local government, sometimes for free. This may block local officials from getting land for local projects. There was a recent example of land being given to a county from Florida DOT and that land became a dog park. The other consideration is that if land was used for a transportation facility and there is a remaining sliver of land, that remaining piece may be better suited as an access point to an adjacent parcel rather than going back to the original owner. This provision in both bills could be problematic for our local officials and you need to be aware of this detail in each bill.

Key dates for the 2021 Florida Legislative Session are shown immediately below. All new bills and any updates to bills shown in the last section of the newsletter are in **RED** so you can quickly distinguish between updates and old news. A few bills have been filed; many more will be filed over the coming months. Your MPOAC Legislative Update will keep you apprised of newly filed bills and changes to existing bills.

Grab a cup of coffee and enjoy this edition of the MPOAC Legislative Update.

Important Dates for the 2021 Legislative Session

- August 1, 2020 - Deadline for filing claim bills (Rule 4.81(2))
- January 29, 2021 5:00 p.m. - Deadline for submitting requests for drafts of general bills and joint resolutions, including requests for companion bills.
- February 26, 2021 5:00 p.m. - Deadline for approving final drafts of general bills and joint resolutions, including companion bills.

- March 2, 2021 - Regular Session convenes (Article III, section 3(b), State Constitution) 12:00 noon, deadline for filing bills for introduction (Rule 3.7(1))
- April 17, 2021 - Motion to reconsider made and considered the same day (Rule 6.4.(4)) All bills are immediately certified (Rule 6.8)
- April 20, 2021 50th day – last day for regularly scheduled committee meetings (Rule 2.9(2))
- April 30, 2021 60th day – last day of Regular Session (Article III, section 3(d), State Constitution)

Legislation of interest to the membership

This is a summary of transportation related bills filed and published on the legislature's website as of February 19, 2021. More bills will be filed during the 2021 session and as they are made available the newly filed transportation bills will be added to this list. The bills are listed in numerical order for your convenience. As the session progresses and the number of bills tracked in this newsletter grows, this ordering of bills will make it easier to follow the status of any bill you are tracking. All new bills and any updates to bills shown below are in **RED** so you can quickly distinguish between updates and old news.

HB 35: Legal Notices – (Fine; Co-Introducer: Grieco) – Provides for website publication of legal notices; provides criteria for such publication; authorizes fiscally constrained county to use publicly accessible website to publish legally required advertisements & public notices; requires government agency to provide specified notice to residents concerning alternative methods of receiving legal notices. Filed in the House. Referred to Civil Justice and Property Rights Subcommittee; Judiciary Committee. On Committee agenda-- Civil Justice and Property Rights Subcommittee, 02/03/21, 4:30 pm, Webster Hall. Passed Civil Justice and Property Rights Subcommittee, now in Judiciary Committee.

HB 53: Public Works Projects – (DiCeglie) – Revises definition of term "public works project"; prohibits state or any political subdivision that contracts for public works project from requiring specified acts by certain persons engaged in such project or prohibiting certain persons from receiving information about public works opportunities. Referred to Government Operations Subcommittee; Public Integrity and Elections Committee; State Affairs Committee. Added to Government Operations Subcommittee agenda. **Passed Government Operations Subcommittee.**

SB 54: Motor Vehicle Insurance – (Burgess; Co-Introducers: Rouson) – Related Bill HB 273 by Plakon, SB 420 by Hooper and HB 719 by Grall. Repealing provisions which comprise the Florida Motor Vehicle No-Fault Law; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; revising financial responsibility requirements for owners or lessees of for-hire passenger transportation vehicles; providing an exception to the circumstances under which a person who is damaged may bring a civil action against an insurer; revising coverages subject to premium discounts for specified motor vehicle equipment; specifying persons whom medical payments coverage must protect, etc. APPROPRIATION: \$83,651. Referred to Banking and Insurance; Judiciary; Rules. Passed Banking and Insurance; YEAS 10 NAYS 2. Now in Judiciary. On Committee agenda-- Judiciary, 02/15/21, 2:30 pm, 412 Knott Building. **Passed Judiciary; 7 YEAS, 2 NAYS. Now in Rules.**

HB 57: Transportation – (Andrade) – Similar Bill SB 1194 by Hooper. Revises provisions relating to motor vehicle sales tax, competitive solicitations, vehicles displaying flashing lights, annual cap on project contracts, airport restrictions, arbitration of contracts by & membership of

State Arbitration Board, borrow pit operation, & performance standards for certain extraction locations. Filed in the House. Referred to Tourism, Infrastructure and Energy Subcommittee; Ways and Means Committee; Infrastructure and Tourism Appropriations Subcommittee; Commerce Committee. Added to Tourism, Infrastructure & Energy Subcommittee agenda. **Passed Tourism, Infrastructure & Energy Subcommittee.**

HB 59: Growth Management – (McClain; Co-Introducer Sabatini) – Similar Bill SB 496 by Perry. Requires local governments to include property rights element in their comprehensive plans; provides statement of rights that local government may use; requires local government to adopt property rights element by specified date; prohibits local government's property rights element from conflicting with statutorily provided statement of rights; provides that certain property owners are not required to consent to development agreement changes; prohibits municipality from annexing specified areas; requires DOT to afford right of first refusal to certain individuals; provides requirements & procedures for right of first refusal; authorizes certain developments of regional impact agreements to be amended. Filed in the House. Referred to Local Administration and Veterans Affairs Subcommittee; Civil Justice and Property Rights Subcommittee; State Affairs Committee. On Committee agenda-- Local Administration and Veterans Affairs Subcommittee, 02/04/21, 12:00 pm, Sumner Hall. Passed Local Administration and Veterans Affairs Subcommittee 12 YEAS, 6 NAYS. Added to Civil Justice & Property Rights Subcommittee agenda. **Passed Civil Justice & Property Rights Subcommittee.**

SB 62: Regional Planning Councils – (Bradley) – Revising a requirement for the Executive Office of the Governor to review and consider certain reports, data, and analyses relating to the revision of the state comprehensive plan; eliminating the advisory role of regional planning councils in state comprehensive plan preparation and revision; repealing provisions relating to the Florida Regional Planning Council Act; authorizing local governments to recommend areas of critical state concern to the state land planning agency, etc. RPCs would be able to host MPOs under the bill as currently written. Referred to Community Affairs; Judiciary; Rules. On Committee agenda-- Community Affairs, 01/26/21, 3:30 pm, 37 Senate Building. CS by Community Affairs; YEAS 6 NAYS 3. Now in Judiciary.

HB 91: Use of Wireless Communications Devices While Driving – (Slosberg; Co-Introducer: Grieco) – Revises short title & legislative intent; prohibits operation of motor vehicle while holding or touching wireless communications device; provides exceptions; revises information that may be admissible as evidence in proceeding to determine whether violation has been committed; revises procedures for collection & reporting by DHSMV of information recorded on citation; conforms provisions relating to use of wireless communications devices in school & work zones. Filed in the House. Referred to Criminal Justice and Public Safety Subcommittee; Tourism, Infrastructure and Energy Subcommittee; Infrastructure and Tourism Appropriations Subcommittee; Judiciary Committee.

SB 138: Electric Vehicles – (Brandes) – Related Bill SB 140 by Brandes. Identical Bill HB817 by Toledo. Revising the Department of Transportation's goals relating to mobility; requiring the department to establish the Electric Vehicle Infrastructure Grant Program; providing for the distribution of grants to certain entities to install electric vehicle charging infrastructure; specifying that certain rules adopted by the Department of Agriculture and Consumer Services may not require specific methods of sale for electric vehicle charging equipment used in, and services provided in, this state, etc. APPROPRIATION: \$5,000,000. Referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations.

SB 140: Fees/Electric Vehicles – (Brandes) – Related Bill SB 138 by Brandes. Identical Bill HB819 by Learned. Creating additional fees for electric vehicles; creating a license tax and an additional fee for plug-in hybrid electric vehicles; requiring, on specified dates, the Department of Highway Safety and Motor Vehicles to increase the additional fees, subject to certain requirements; providing that certain vehicles are exempt from specified fees, etc. Referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations.

HB 139: Electronic Transactions for Title Certificates and Registrations – (Fernandez-Barquin) – Authorizes tax collectors to accept applications for motor vehicle & vessel certificates of title by electronic or telephonic means, to collect electronic mail addresses for use as method of notification, & to contract with vendors to provide electronic & telephonic transactions; provides that electronic signature that meets certain requirements satisfies signature required for application for certificate of title; specifies tax collection systems for which certain fees may be used for integration with Florida Real Time Vehicle Information System; requires DHSMV to provide tax collectors & approved vendors with certain data access & interface functionality; specifies authorized uses; requires DHSMV to ensure approved vendors protect customer privacy & data collection. Filed in the House. Referred to Tourism, Infrastructure and Energy Subcommittee; Infrastructure and Tourism Appropriations Subcommittee; Commerce Committee.

SB 178: Public School Transportation – (Cruz) – Comparable Bill HB 229 by Salzman. Revising the requirement that district school boards provide transportation for certain students; requiring a district school superintendent to request a review of a hazardous walking condition upon receipt of a written request from a parent of a student; requiring, rather than authorizing, a district school board to initiate a specified proceeding relating to hazardous walking conditions, etc. Referred to Education; Appropriations Subcommittee on Education; Appropriations.

HB 205: Requirements for Establishing or Increasing Tolls – (Borrero) – Requires increase of current toll or development of new toll collection facility in county with certain population to be approved by board of county commissioners. After July 01, 2022 a toll increase or new toll in a county of over 1 million population will require a two-thirds vote of board of county commissioners at a regularly scheduled meeting. Filed in the House. Referred to Tourism, Infrastructure and Energy Subcommittee; Ways and Means Committee; Commerce Committee.

HB 229: Hazardous Walking Conditions for K-12 Students – (Salzman) – Comparable Bill SB 178 by Cruz. Requires DOT to develop & adopt standards & criteria to identify hazardous walking conditions; Revises provisions relating to the transportation of students subjected to hazardous walking conditions & funding for such students. Filed in the House. Referred to Early Learning and Elementary Education Subcommittee; Tourism, Infrastructure and Energy Subcommittee; Appropriations Committee; Education and Employment Committee.

HB 267: State Preemption of Seaport Regulations – (Roach; Sirois) – Identical Bill SB 426 by Boyd. Preempts to state regulation of commerce in state seaports; provides exceptions; provides construction. Referred to Tourism, Infrastructure & Energy Subcommittee; Local Administration & Veterans Affairs Subcommittee; Commerce Committee. Now in Tourism, Infrastructure & Energy Subcommittee.

HB 273: Motor Vehicle Insurance Coverage Exclusions – (Plakon) – Similar to SB54 by Burgess, SB 420 by Hooper and HB 719 by Grall. Provides private passenger motor vehicle policies may exclude identified individuals from specified coverages; provides exceptions. Filed

in the House. Referred to Insurance & Banking Subcommittee; Commerce Committee. Now in Insurance & Banking Subcommittee.

SB 278: Traffic Offenses – (Baxley) - Creating the “Vulnerable Road User Act”; providing criminal penalties for a person who commits a moving violation that causes serious bodily injury to, or causes the death of, a vulnerable road user; requiring that the person who commits the moving violation pay a specified fine, serve a minimum period of house arrest, and attend a driver improvement course; requiring that the court revoke the person’s driver license for a minimum specified period, etc. Filed in the Senate. Referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations. Now in Transportation.

HB 297: Child Restraint Requirements – (Hinson) – Identical Bill SB380 by Perry - Increasing the age of children for whom operators of motor vehicles must provide protection by using a crash-tested, federally approved child restraint device; increasing the age of children for whom a separate carrier, an integrated child seat, or a child booster seat may be used, etc. Filed in the House. Referred to Tourism, Infrastructure & Energy Subcommittee; Children, Families & Seniors Subcommittee; Commerce Committee. Now in Tourism, Infrastructure & Energy Subcommittee.

HB 337: Impact Fees – (DeCeglie) – Identical to S750 by Gruters - Specifying instances when a local government or special district may collect an impact fee; requiring local governments and special districts to credit against the collection of impact fees any contribution related to public facilities; providing annual limitations on impact fee rate increases; requiring school districts to report specified items regarding impact fees, etc. Referred to Community Affairs; Finance and Tax; Appropriations. Now in Local Administration & Veterans Affairs Subcommittee.

SB 342: Vehicle and Vessel Registration – (Diaz) – Requiring tax collectors to determine service charges collected by privately owned license plate agents for motor vehicle titles; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; requiring tax collectors and approved license plate agents to enter into a memorandum of understanding with the department for a certain purpose, etc. Filed in the Senate. Referred to Transportation; Finance and Tax; Rules.

HB 353: Bicycle Operations Regulations – (Hage) – Identical to SB738 by Baxley - Providing an exception to the requirement that a person operating a bicycle ride upon or astride a seat attached thereto, etc. Filed in the House. Referred to Tourism, Infrastructure & Energy Subcommittee; Commerce Committee. Now in Tourism, Infrastructure & Energy Subcommittee. Added to Tourism, Infrastructure & Energy Subcommittee agenda. **Passed Tourism, Infrastructure & Energy Subcommittee. Now in Commerce Committee.**

HB 357: Photographic Enforcement of School Zone Speed Limits – (Duran and Rodriguez) – Authorizes county or municipality to contract with vendor to install cameras in school speed zones to enforce speed limits; provides civil penalty for violation found through recording of photographic images; provides for disposition & use of funds; provides for determination of liability; provides nonapplication of violation to driver license points assessment, conviction, driving record, or provision of motor vehicle insurance coverage; requires referral to DHSMV resulting in prohibition of motor vehicle registration renewal & transfer of title; provides for removal of penalties. Filed in the House. Referred to Criminal Justice & Public Safety Subcommittee; Tourism, Infrastructure & Energy Subcommittee; Justice

Appropriations Subcommittee; Judiciary Committee. Now in Criminal Justice & Public Safety Subcommittee.

HB 365: Motor Vehicle Rentals – (Caruso) – Similar to SB 566 by Perry and S 708 By Brandes - Provides requirements for sales taxes & surcharges on motor vehicle leases & rentals by motor vehicle rental companies & peer-to-peer car-sharing programs; specifies insurance requirements for shared vehicle owners & shared vehicle drivers; provides for liability; provides for exclusions; provides right of contribution to shared vehicle owner's insurer for certain claims; requires provision of certain information regarding liens; specifies recordkeeping, record-sharing, disclosure, & driver license verification & data retention requirements; provides for consumer protections Filed in the House. Referred to Tourism, Infrastructure & Energy Subcommittee; Ways & Means Committee; Commerce Committee. Now in Tourism, Infrastructure & Energy Subcommittee.

SB 376: Jacksonville Transportation Authority Leases – (Gibson) – Related Bill HB 6015 by Duggan. Removing a limitation on the term of a lease into which the authority may enter, etc. Filed in the Senate. Referred to Transportation; Community Affairs; Rules. Favorable by Transportation; YEAS 8 NAYS 0. Now in Community Affairs.

SB 380: Child Restraint Requirements – (Perry) – Identical Bill HB297 by Hinson - Increasing the age of children for whom operators of motor vehicles must provide protection by using a crash-tested, federally approved child restraint device; increasing the age of children for whom a separate carrier, an integrated child seat, or a child booster seat may be used, etc. Referred to Children, Families, and Elder Affairs; Transportation; Rules. On Committee agenda-- Children, Families, and Elder Affairs, 02/03/21, 9:00 am, 37 Senate Building. Favorable by Children, Families, and Elder Affairs; YEAS 8 NAYS 0. Now in Transportation. On Committee agenda-- Transportation, 02/16/21, 3:30 pm, 110 Senate Building. **Passed Transportation; 8 YEAS, Zero NAYS. Now in Rules.**

HB 389: Tampa Bay Area Regional Transit Authority – (Mariano) – Identical to SB 422 By Rouson - Renames Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee as Chairs Coordinating Committee; removes requirement that authority provide administrative support & direction; authorizes mayor's designated alternate to be member of governing board of authority; requires that alternate be elected member of & approved by city council; requires alternate to attend meetings in mayor's absence & have full voting rights; revises quorum requirements; requires simple majority of members present for action to be taken; deletes requirements for authority to present regional transit development plan & updates to TBARTA Metropolitan Planning Organization Chairs Coordinating Committee, coordinate plans & projects with committee, & participate in regional M.P.O. planning process. Referred to Tourism, Infrastructure & Energy Subcommittee; Local Administration & Veterans Affairs Subcommittee; Commerce Committee. Now in Tourism, Infrastructure & Energy Subcommittee.

SB 420: Motor Vehicle Insurance Coverage Exclusions – (Hooper) – Similar to SB54 by Burgess, HB273 by Plakon and HB 719 by Grall - Providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; providing that such policies may not exclude coverage under certain circumstances, etc. Referred to Banking and Insurance; Judiciary; Rules.

SB 422: Tampa Bay Area Regional Transit Authority – (Rouson) – **Identical to HB 389 by Mariano** - Renaming the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee as the Chairs Coordinating Committee; providing

that a mayor's designated alternate may be a member of the governing board of the authority; revising a provision requiring the authority to present the regional transit development plan and updates to specified entities, etc. Filed in the Senate. Referred to Transportation; Community Affairs; Rules. On Committee agenda-- Transportation, 02/16/21, 3:30 pm, 110 Senate Building. **Passed Transportation; 8 YEAS, Zero NAYS. Now in Community Affairs.**

SB 426: State Preemption of Seaport Regulations – (Boyd) – Identical Bill HB 267 by Roach. Preempting to the state the regulation of commerce in state seaports; providing exceptions, etc. Referred to Transportation; Community Affairs; Rules.

SB 496: Growth Management – (Perry) - Similar to HB 59 by McClain. Specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; requiring local governments to include a property rights element in their comprehensive plans; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances, etc. Filed in the Senate. Referred to Community Affairs; Judiciary; Rules.

SB 514: Resiliency – (Rodriguez) - Establishing the Statewide Office of Resiliency within the Executive Office of the Governor; creating the Statewide Sea-Level Rise Task Force adjunct to the office; authorizing the Department of Environmental Protection to contract for specified services, upon request of the task force; requiring the Environmental Regulation Commission to take certain action on the task force's recommendations, etc. APPROPRIATION: \$500,000. Filed in the Senate. Referred to Environment and Natural Resources; Appropriations Subcommittee on Agriculture, Environment, and General Government; Appropriations. On Committee agenda-- Environment and Natural Resources, 02/15/21, 3:30 pm, 37 Senate Building. **Passed Environment and Natural Resources; 6 YEAS, Zero NAYS. Now in Appropriations Subcommittee on Agriculture, Environment, and General Government.**

SB 566: Motor Vehicle Rentals – (Perry) – Similar to HB365 by Caruso and SB708 by Brandes - Specifying the applicable sales tax rate on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; specifying the applicable rental car surcharge on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; specifying insurance requirements for shared vehicle owners and shared vehicle drivers under peer-to-peer car-sharing programs; providing an exemption from vicarious liability for peer-to-peer car-sharing programs and shared vehicle owners, etc. Filed in the Senate. Referred to Banking and Insurance; Transportation; Appropriations.

HB 605: Bicycle and Pedestrian Safety – (Hunschofsky) – Identical to SB950 by Book - Revising and providing requirements for the driver of a motor vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; requiring the Department of Highway Safety and Motor Vehicles to provide an awareness campaign, and include information in certain educational materials, regarding certain safety precautions; exempting a motor vehicle driver from certain provisions relating to no-passing zones when overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; revising requirements for vehicles turning at intersections; prohibiting persons riding bicycles in a bicycle lane from riding more than two abreast, etc. Filed in the House. **Referred to Tourism, Infrastructure & Energy Subcommittee, Infrastructure & Tourism Appropriations Subcommittee, Commerce Committee. Now in Tourism, Infrastructure & Energy Subcommittee.**

SB 684: Department of Transportation – (Brandes) – Identical to HB 707 by Chaney - Requiring the Department of Transportation to allow persons to purchase certain commuter passes for their motor vehicles; requiring that funds collected from the sale of the commuter passes be deposited in specified trust funds and used for the operation and maintenance of the Pinellas Bayway System; requiring the department or the enterprise, as appropriate, to use a specified portion of funds collected from the sale of commuter passes during a specified period of time for landscaping and beautification, etc. Referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations.

HB 707: Department of Transportation – (Chaney) – Identical to SB 684 by Brandes - Requires DOT to allow persons to purchase commuter passes for motor vehicles; requires funds collected from sale of commuter passes be deposited in specified trust funds & used for operation & maintenance of Pinellas Bayway System; requires DOT or Florida Turnpike Enterprise to index annual commuter pass costs to inflation indicators; requires DOT or Florida Turnpike Enterprise to use specified portion of funds collected from sale of commuter passes during specified periods of time for landscaping & beautification. Referred to Tourism, Infrastructure & Energy Subcommittee; Infrastructure & Tourism Appropriations Subcommittee; Commerce Committee. Now in Tourism, Infrastructure & Energy Subcommittee.

SB 708: Peer-to-peer Car Sharing – (Brandes) – Identical to HB 785 by Busatta Cabera - Specifying motor vehicle insurance requirements for peer-to-peer car-sharing programs; authorizing peer-to-peer car-sharing programs to own and maintain certain policies of motor vehicle insurance; requiring peer-to-peer car-sharing programs to assume certain liability; authorizing motor vehicle insurance policies to exclude specified coverages under certain circumstances; authorizing specified insurers to seek contributions against indemnifications under certain circumstances, etc. Referred to Banking and Insurance; Transportation; Appropriations.

HB 719: Motor Vehicle Insurance – (Grall) – Similar to SB54 by Burgess, HB 273 by Plakon and SB 420 by Hooper - Repeals provisions relating Florida Motor Vehicle No-Fault Law; revises garage liability insurance requirements; revises minimum coverage requirements for proof of financial responsibility for motor vehicles; revises amount of certificate of deposit required to elect certain method of proof of financial responsibility; revises excess liability coverage requirements; revises financial responsibility requirements for owners or lessees of for-hire passenger transportation vehicles; revises coverages of motor vehicle policy which are subject to stacking prohibition; revises insurance requirements for transportation network companies or TNC drivers or vehicle owners. APPROPRIATION: \$83,651. Filed in the House. Referred to Civil Justice & Property Rights Subcommittee, Insurance & Banking Subcommittee, Judiciary Committee. Now in Civil Justice & Property Rights Subcommittee.

HB 729: Transportation Projects – (Gregory) – Identical Bill SB 1364 by Brodeur. Limits amount of State Transportation Trust Fund revenues to be committed for certain public transportation projects; revises amount of funding allocated by DOT to transportation construction projects for purchase of plant materials; revises types of projects receiving allocation; removes requirement that certain amount of allocation be for purchase of large plant materials; requires purchased plant materials to be grown in this state; authorizes DOT to enter into certain contracts without advertising & receiving competitive bids; authorizes DOT to combine certain work phases. Filed in the House. Referred to Tourism, Infrastructure & Energy Subcommittee, Infrastructure & Tourism Appropriations Subcommittee, Commerce Committee. Now in Tourism, Infrastructure & Energy Subcommittee.

SB 738: Bicycle Operations Regulations – (Baxley) – Identical to HB353 by Hage - Providing an exception to the requirement that a person operating a bicycle ride upon or astride a seat attached thereto, etc. Referred to Transportation; Community Affairs; Rules. On Committee agenda-- Transportation, 02/16/21, 3:30 pm, 110 Senate Building. **Passed Transportation; 8 YEAS, Zero NAYS. Now in Community Affairs.**

HB 745: School Bus Safety – (Slosberg) – Identical to SB1050 by Berman - Authorizes school district to install cameras on school buses; authorizes DHSMV, county, or municipality to authorize traffic infraction enforcement officer to issue & enforce citation for failing to stop for school bus; requires notification to be sent to owner of vehicle involved in violation; prohibits receiving commission or remuneration based on use of camera; requires payment of citation unless certain information is established in affidavit; provides penalties for submitting false affidavit; requires annual reports to DHSMV, Governor, & Legislature; provides hearing procedures; authorizes appeal of final order; provides disposition of civil penalties. Filed in the House. **Referred to Criminal Justice & Public Safety Subcommittee; PreK-12 Appropriations Subcommittee; Judiciary Committee. Now in Criminal Justice & Public Safety Subcommittee.**

SB 750: Impact Fees – (Gruters) – Identical to HB337 by DiCeglie - Specifying instances when a local government or special district may collect an impact fee; requiring local governments and special districts to credit against the collection of impact fees any contribution related to public facilities; providing annual limitations on impact fee rate increases; requiring school districts to report specified items regarding impact fees, etc. Referred to Community Affairs; Finance and Tax; Appropriations.

HB 763: Repeal of the Multi-use Corridors of Regional Economic Significance Program and Reversion of Program Funds – (Diamond) – Identical to SB1030 by Polsky - Repeals provisions relating to M-CORES Program & related funding; requires portions of certain annual license tax revenues to be deposited into General Revenue Fund; revises period during which certain revenues shall be transferred to Florida's Turnpike Enterprise. Filed in the House. **Referred to Tourism, Infrastructure & Energy Subcommittee; Infrastructure & Tourism Appropriations Subcommittee; Commerce Committee. Now in Tourism, Infrastructure & Energy Subcommittee.**

HB 785: Peer-to-peer Car Sharing – (Brusatta Cabera) – Identical to SB708 by Brandes - Provides motor vehicle insurance requirements for peer-to-peer car sharing; provides that peer-to-peer car-sharing programs have insurable interest in shared vehicles; authorizes such companies to own & maintain certain policies of motor vehicle insurance; provides primary liabilities; provides exemptions from vicarious liabilities; authorizes insurance policies to exclude specified coverages; authorizes specified insurers to seek contributions against indemnifications; provides requirements for notifications of implications of liens, recordkeeping & specified disclosures to shared vehicle drivers & owners. Filed in the House.

HB 817: Electric Vehicles – (Toledo) – Linked bill HB819 by Learned. Identical to SB138 by Brandes - Authorizes DOT to adopt rules; revises DOT's goals relating to mobility; requires that certain funds be used for specified purposes relating to Electric Vehicle Infrastructure Grant Program; requires that certain funds remain in State Transportation Trust Fund; requires DOT to establish program; provides for distribution of grants to certain entities to install electric vehicle charging infrastructure; provides grant requirements; provides requirements for equipment installed using grant funds; provides duties of DOT; authorizes DOT to develop model plan for local governments; requires DOT to adopt rules; specifies that certain rules adopted by DACS may not require specific methods of sale for electric vehicle charging equipment used in, &

services provided in, this state; provides appropriation. APPROPRIATION: \$5,000,000. Filed in the House.

HB 819: Fees/Electric Vehicles – (Learned) – Linked bill HB817 by Toledo. Identical to SB140 by Brandes - Creates additional fees for electric vehicles; creates license tax & an additional fee for plug-in hybrid electric vehicles; provides for distribution of proceeds from additional fees; requires DHSMV to increase additional fees, subject to certain requirements; exempts certain vehicles from specified fees; provides for future expiration & reversion of specified statutory text. Filed in the House.

SB 924: Multi-use Corridors of Regional Economic Significance Program – (Hooper) – Revising the allocation of certain funds, for specified fiscal years, that result from increased revenues to the State Transportation Trust Fund, etc. Referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations.

SB 950: Bicycle and Pedestrian Safety – (Book) – Identical to HB605 by Hunschofsky - Revising and providing requirements for the driver of a motor vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; requiring the Department of Highway Safety and Motor Vehicles to provide an awareness campaign, and include information in certain educational materials, regarding certain safety precautions; exempting a motor vehicle driver from certain provisions relating to no-passing zones when overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; revising requirements for vehicles turning at intersections; prohibiting persons riding bicycles in a bicycle lane from riding more than two abreast, etc. Filed in the Senate. Referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations.

SB 1030: Repeal of the Multi-use Corridors of Regional Economic Significance Program and Reversion of Program Funds – (Polsky) – Identical to HB763 by Diamond - Repeals provisions relating to M-CORES Program & related funding; requires portions of certain annual license tax revenues to be deposited into General Revenue Fund; revises period during which certain revenues shall be transferred to Florida's Turnpike Enterprise. Filed in the Senate. Referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations.

SB 1050: School Bus Safety – (Berman) – Identical to HB745 by Slosberg - Authorizes school district to install cameras on school buses; authorizes DHSMV, county, or municipality to authorize traffic infraction enforcement officer to issue & enforce citation for failing to stop for school bus; requires notification to be sent to owner of vehicle involved in violation; prohibits receiving commission or remuneration based on use of camera; requires payment of citation unless certain information is established in affidavit; provides penalties for submitting false affidavit; requires annual reports to DHSMV, Governor, & Legislature; provides hearing procedures; authorizes appeal of final order; provides disposition of civil penalties. Referred to Transportation; Judiciary; Appropriations.

HB 1113: Traffic and Pedestrian Safety – (Fine) – Similar to SB 1412 by Perry - Requires study to be conducted which recommends installation of specified pedestrian crosswalk before installation occurs; requires pedestrian crosswalk on public highway, street, or road which is located at point other than at intersection with another public highway, street, or road to conform to specified requirements; provides coordination requirements for such devices & signals; requires entity with jurisdiction over public highway, street, or road with certain pedestrian crosswalk to ensure that crosswalk conforms to specified requirements or authorizes entity to remove any such crosswalk; requires DOT to submit certain request for authorization to Federal

Government; requires applicable entities to replace or remove specified traffic control devices within specified timeframe after date of federal authorization or denial, as applicable; authorizes retrofitting. Filed in the House.

SB 1126: Department of Transportation – (Harrell) – Clarifying that the Department of Revenue is responsible for a certain transfer from the State Treasury to the General Revenue Fund of a portion of documentary stamp tax distributions credited to the State Transportation Trust Fund; deleting a requirement that the department provide space and video conference capability at each of the department’s district offices as an alternative to physical appearance by a person requesting a hearing before the Commercial Motor Vehicle Review Board within the department; requiring the department, when proposing any project on the State Highway System which will close or modify an existing access to an abutting property owner, to provide notice to affected property owners, municipalities, and counties at least 180 days before the design phase of the project is completed, etc. Filed in the Senate. Referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations.

SB 1194: Transportation – (Hooper) – Similar to HB57 by Andrade - Providing that certain governmental entities may not prohibit certain vendors from responding to competitive solicitations of certain contractual services; requiring contractors wishing to bid on certain contracts to first be certified by the Department of Transportation as qualified; exempting airports from certain restrictions regarding entities performing engineering and inspection services; revising and providing definitions; revising requirements for arbitration of certain contracts by the State Arbitration Board, etc. Filed in the Senate. Referred to Transportation; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations.

SB 1248: Racing Motor Vehicles – (Book) – Revising prohibitions on persons driving motor vehicles in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed, a stunt, agility, or acceleration or for other specified purposes on any highway, roadway, or parking lot; prohibiting a person from coordinating via social media any such race, competition, contest, test, or exhibition; prohibiting persons from operating a vehicle in a manner that would constitute participation in an organized ride, etc. Filed in the Senate. Referred to Transportation; Criminal Justice; Rules.

SB 1276: Fees – (Hooper) – Requiring the Department of Highway Safety and Motor Vehicles to publish notice when electric vehicles and hybrid vehicles make up 5 percent or more of the total number of vehicles registered in this state; providing fees for electric vehicles and hybrid vehicles beginning after the department publishes such notice; requiring that the proceeds of certain fees be deposited into the State Transportation Trust Fund, etc. Filed in the Senate. Referred to Transportation; Finance and Tax; Appropriations.

SB 1332: Electric Vehicle Charging Stations – (Brandes) – Urging Congress to authorize installation of electric vehicle charging stations in rest areas on the interstate highway system and to allow charging station providers to charge a fee for public use of charging stations installed in such rest areas, etc. Filed in the Senate.

SB 1364: Transportation Projects – (Brodeur) – Identical Bill HB 729 by Gregory. Limiting the amount of State Transportation Trust Fund revenues to be committed for certain public transportation projects; revising the amount of funding allocated by the Department of Transportation to transportation construction projects for the purchase of plant materials; removing a requirement that a certain amount of such allocation be for the purchase of large plant materials; requiring purchased plant materials to be grown in this state; authorizing the

department to enter into certain contracts without advertising and receiving competitive bids under certain circumstances, etc. Filed in the Senate.

SB 1412: Traffic and Pedestrian Safety – (Perry) – Similar Bill HB 1113 by Fine. Citing this act as the "Sophia Nelson Pedestrian Safety Act"; requiring a traffic engineering study to be conducted which recommends installation of a specified pedestrian crosswalk before such installation occurs; requiring a pedestrian crosswalk on a public highway, street, or road which is located at any point other than at an intersection with another public highway, street, or road to conform to specified requirements; providing coordination requirements for certain devices and signals; requiring that traffic control signal devices at adjacent intersections be taken into consideration, etc. Filed in the Senate.

HB 6009: Traffic Infraction Detectors – (Sabatini; Co-Introducers: Borrero; D. Smith) - Repeals provisions relating to Mark Wandall Traffic Safety Program & authorization to use traffic infraction detectors; repeals provisions relating to distribution of penalties, transitional implementation, & placement & installation; conforms cross-references & provisions to changes made by act. Filed in the House. Referred to Tourism, Infrastructure and Energy Subcommittee; Appropriations Committee; Commerce Committee.

HB 6015: Jacksonville Transportation Authority Leases – (Duggan) – Related Bill SB 376 by Gibson. Removes limitation on term of lease into which authority may enter. Filed in the House. Referred to Tourism, Infrastructure and Energy Subcommittee; Infrastructure and Tourism Appropriations Subcommittee; Commerce Committee.

**PRESENTATIONS
ITEM NUMBER 8A**

Minton Road Feasibility Study

For further information, please contact:
sarah.kraum@brevardfl.gov

Strategic Plan Emphasis Area:
Linking Transportation & Land Use

DISCUSSION:

In 2019, on behalf of West Melbourne the Space Coast TPO began conducting the Minton Road Feasibility Study. The purpose of the project was to assess the need and feasibility of widening the road, address congestion and safety issues, and create a more multi-modal corridor. The corridor assessed is from Palm Bay Road to US 192; is maintained by the County and within the West Melbourne city limits. It includes two bus routes, nine public and private schools, a variety of land uses, parks, and access to Promise in Brevard, a housing facility for special needs adults.

The study process included coordination with Brevard County and West Melbourne, Technical Committee meetings and review, two public meetings, field reviews, Intersection Control Evaluation, existing conditions analysis, data collection, travel demand modeling, and other advanced planning processes.

Consultant staff will present the final concepts and outcomes from the study. Please visit here for more information: <https://spacecoasttpo.com/minton/> or our Virtual Project Guide developed as part of the virtual public involvement process: <https://www.mintonroadstudy.com/>

REQUESTED ACTION:

As desired by the Space Coast TPO Technical Advisory Committee

ATTACHMENTS

- Minton Road Feasibility Study, Presentation Slides



SCTPO TAC/CAC/Board Meetings
March 8 and 10, 2021



MEETING AGENDA



Project Location, Goals, and Recap



Life Cycle of a Project



Preferred Roadway Plan and Cost Estimate
Summary



Next Steps



PROJECT LOCATION



PROJECT GOALS



Assess the need / feasibility of widening from four to six lanes – determined widening will not be explored



Address existing / future congestion and safety issues – incorporated into preferred alternative



Incorporate / enhance multi-modal improvements to facilitate pedestrian, bicycle, and transit movements – incorporated into preferred alternative

PROJECT RECAP

Existing Conditions/
Future No-Build

- Summer/Fall/Winter 2019
- Helped determine Issues/Opportunities along corridor

Roadway and Intersection
Alternatives
Analysis

- Spring/Summer 2020
- Presented 4 roadway and numerous intersection alternatives to Public in August 2020

Preferred
Roadway Plan
Development

- Fall/Winter 2020
- Selected preferred roadway plan based on Public and Technical Committee input

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LIFE CYCLE OF A PROJECT – MINTON ROAD

We Are Here

Planning
(1 to 2 Years)



Citizen Input
Existing Conditions
Proposed Solutions

PD&E
(2 to 3 Years)



Project Development
Environmental Impact
Identify Alternatives
Select Preferred Solution

Design
(1 to 2 Years)



Engineering Drawings
Identify Right-of-Way

Right-of-Way
(1 to 5 Years)



Purchase Property

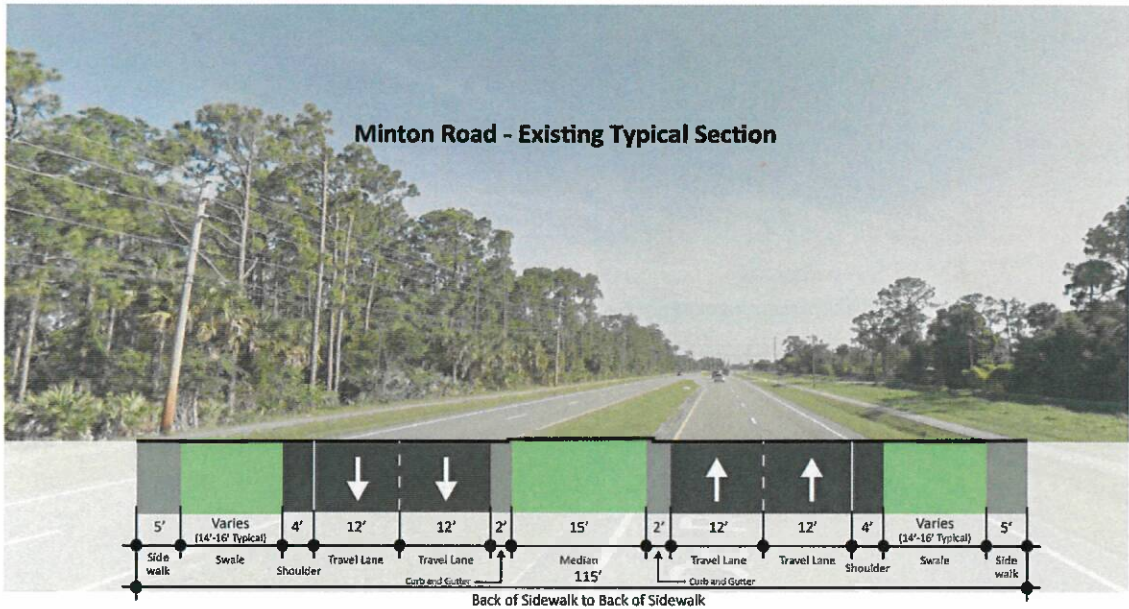
Construction
(1 to 3 Years)



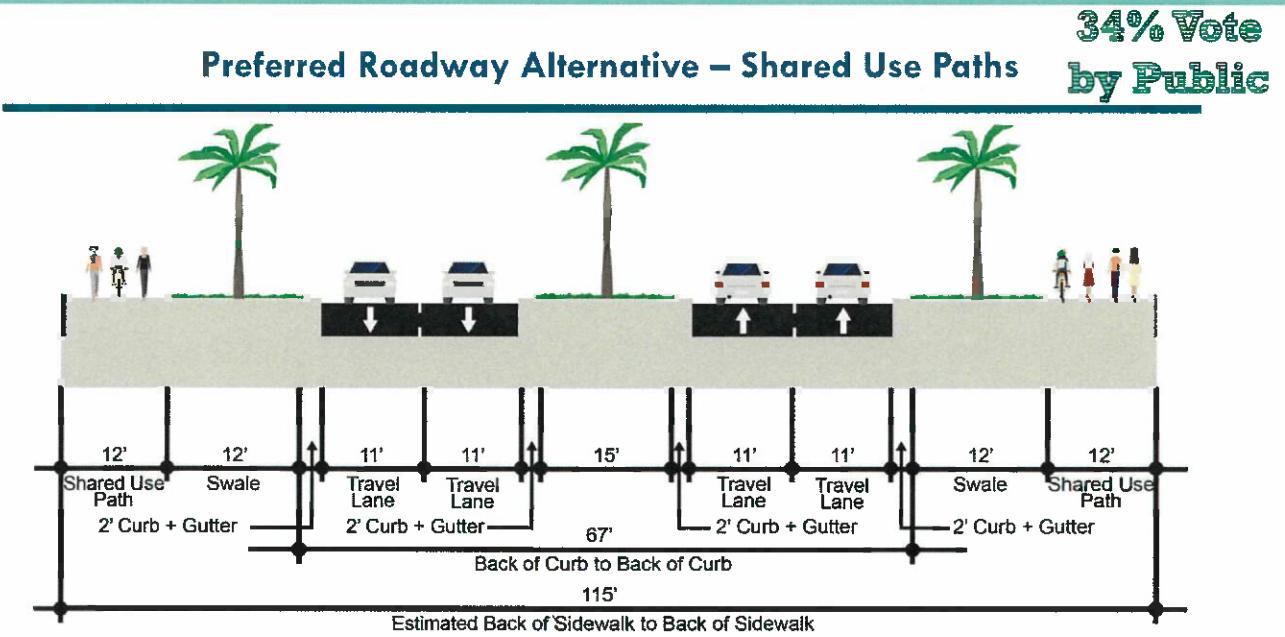
Obtain Permits
Build Improvements

Total 6-14 Years from Planning through Construction

6



7

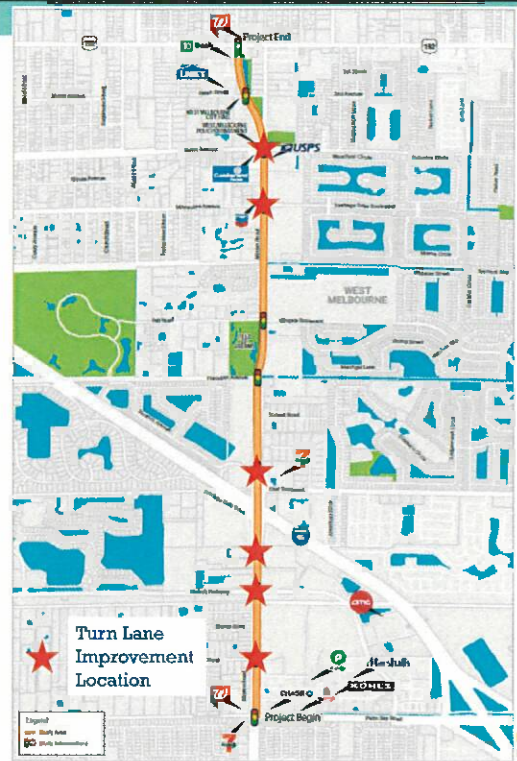


8

INTERSECTION SUMMARY

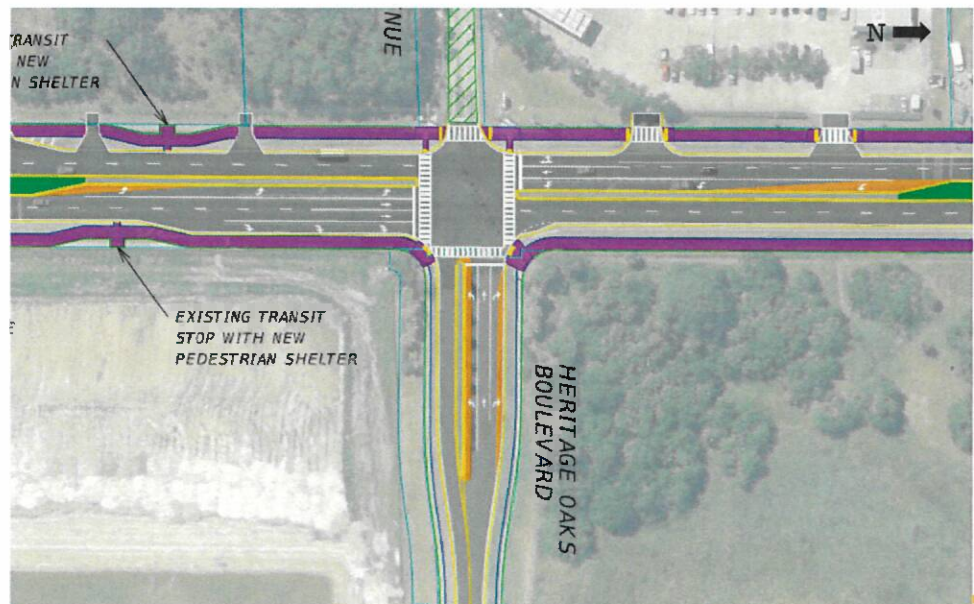
- Turn Lane Improvements Proposed At:
 - Hield Rd.
 - Norfolk Pkwy.
 - Carriage Gate Dr.
 - Burdock Ave./Eber Blvd.
 - Milwaukee Ave./Heritage Oaks Blvd.
 - Henry Ave.
- **No Improvements:** 4 of 6 intersections operate at LOS E/F in one peak hour
- **With Improvements:** Only 1 intersection operates at LOS E in one peak hour
- Travel time reductions between 9% and 28% during peak hours

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MILWAUKEE AVENUE / HERITAGE OAKS BOULEVARD IMPROVEMENTS

- Received public comment related to adding turn lanes
- Added an exclusive WB left-turn lane to improve traffic operations and safety
- Recommended adding exclusive EB right turn lane (to be designed and constructed by others)



OPINION OF PROBABLE COST

Location	Cost		
	Right-of-Way	Construction	Total
Hield Road	-	\$470,000	\$470,000
Norfolk Parkway	-	\$1,150,000	\$1,150,000
Carriage Gate Drive	-	\$700,000	\$700,000
Burdock Avenue/Eber Boulevard	-	\$1,200,000	\$1,200,000
Milwaukee Avenue/Heritage Oaks Boulevard	-	\$900,000	\$900,000
Henry Avenue	\$1,400,000	\$1,020,000	\$2,420,000
Remainder of Corridor	-	\$6,740,000	\$6,740,000
Total	\$1,400,000	\$12,180,000	\$13,580,000

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NEXT STEPS

- Final Report for Study Published within next 60 days
- Design, Right-of-Way, and Construction Phases Unfunded
 - City of West Melbourne/Brevard County coordination needed
 - If project is to utilize TPO funds, will need to be submitted through TPO's annual call for projects cycle

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QUESTIONS / CONTACT INFORMATION

SCTPO Project Manager

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Sarah.Kraum@brevardfl.gov

Kittelson Project Manager

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225 East Robinson Street
Suite 355
Orlando, FL 32801
Phone: 407-540-0555
thills@kittelson.com



TRANSPORTATION THURSDAYS WEBINAR SERIES: TRAIL BLAZING IN BREVARD COUNTY

APRIL 15, 2021 | 10:00 - 11:00 AM

REGISTER HERE: [TINYURL.COM/321BLAZINGTRAILS](https://tinyurl.com/321BLAZINGTRAILS)

Join SCTPO Senior Transportation Planner, Sarah Kraum, and special guest speakers during a FREE, **#TransportationThursdays** webinar to learn more about Brevard's best trails, the regional trail system, trail planning, and how trails spark economic development.



Presenter: Sarah Kraum, Senior Transportation Planner



Malabar Asset Management and Master Plan

SAI Project Manager: Allyson Hunt

Task Description		Current % Complete	Task Milestone Date	Status as of 3/12/2021
1	Data Collection and Review	80%	9/18/2020	
1.1	Data Collection	100%		Complete
1.2	Indetification of Topographic Voids	100%		Complete
1.3	Field Reconnaissance / Eng. Level Survey	100%		Field work within the Town limits is complete and data has been uploaded to the AGOL platform. Additional field recon for modeling purposes will be conducted as needed
1.4	Professional Survey	0%		Survey needs will be identified after field reconnaissance
2	Asset Management Geodatabase Development	95%	9/18/2020	
2.1	Asset Management Geodatabase Development / Coordination	95%		- Desktop Training conducted on 2/23/21 - Field training scheduled for 3/24/21
3	Stormwater Model Development	100%	11/6/2020	
3.1	Model Network Developent	100%		Model network development completed
3.2	2D Region Development	100%		2D features development has been completed
3.3	Model Hydraulic and Hydrologic Parameterization	100%		Model Parameterization is completed. Model parameters will be updated as necessary throughout the project should new or better information become available.
4	Model Setup, Execution, Debug and Stabilization	80%	11/13/2020	
4.1	Generation of ICPRv4 Model using GWIS	100%		GWIS imported into ICPR4
4.2	Model Debug and Stabilization	75%		In progress

SAI Project Manager: Allyson Hunt

4.3	QC of ICPRv4 Model	60%		Initial QC complete. Final QC will be completed with the completion of Task 4.2.
4.4	Update Project GWIS	0%		Will be conducted after completion of Task 4.3
5	SWMP Model Validation	0%	11/13/2020	Pending Completion of Task 4
5.1	Model Validation	0%		
5.2	Update Project GWIS	0%		
6	Final Model Execution and Floodplain Development	0%	11/13/2020	Pending Completion of Task 5
7	Design Solution Development	0%	2/12/2021	Pending Completion of Task 6
8	Report Documentation	0%	3/12/2021	Pending Completion of Task 6/8
Project Total % Complete		44%		

Notes

NTP Received: 6/16/2020

TOWN OF MALABAR

MEMORANDUM

Date: March 13, 2021 2021-TC/T-024

To: Honorable Council, Mayor Reilly

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

Ref: Malabar un-audited Financials: mid-year update

The Town is just under half-way through the budget year. I have attached the Budget to Actual report through the 11th of March. Most of the monthly State revenues don't post until later in the month, but our receipts are on par with last year's receipts. Revenue Sharing is down about \$4,000.00 from this period last year. The Revenue Sharing Trust Fund includes three sources for municipalities 1.3409% of net sales and use tax collections, the state-levied one-cent municipal gas tax collections and 12.5% of the state alternative fuel user decal fee collections. These funds are distributed to qualifying municipalities using a formula that is weighted by a percentage based on population, sales tax and a municipality's property valuation. As reported by the FLC, *A Recovery Landscape* (attached) we can anticipate some additional revenue declines as we forecast the 2022 budget.

We have also received reimbursement on the DEP Revolving Loan based upon the current expenditure of \$50,778.00 to Singhofen and Associates for their work on the Stormwater Master Plan.

Reimbursements for expenditures made for COVID-19 related purposes have been paid through the CARES Act totaling \$14,922.76. We have a third in for consideration for \$1,100.98.

We have received \$12,000.00 from the Transportation Impact Fee trust (TIFt) collected by the County. That was pledged to pay the Town's 40% of the paving cost of Hunter Lane. In addition, we have an estimated balance of \$248,053.00 at the County available to us when we submit for eligible road projects. Each new home pays \$4,353.00 in transportation impact fees.

We transferred 300K from surplus reserves to the Dana Investments at the close out of last year's budget. The Town's investments did very well in 2020 especially given the extremely low rate environment. As we look at 2021 and beyond, Dana's portfolio managers see the prospect of higher rates on the horizon. Given the pandemic and its current effect on the economy, these higher rates may not be on the immediate horizon, but the Federal Reserve has indicated their expectations for higher rates in the future. (see attached email from Dave Mazza with chart.)

The amount of money in restricted reserves, set aside for Parks and Recreation capital improvements total \$45,160.00. These are dollars not reflected in the annual budget but are available for capital planning. The latest Capital Improvement Plan (C.I.P.) report is attached.

All Expense departments are within expected expenditure levels. No department is out of balance or over budget.

The current budget provides for the annual payments for the new Fire Truck (payment 4 of 10) and the annual payment for the Gradall (payment 3 of 10). The budget also includes \$200,000.00 to pay in full upon delivery of the new excavator (3/19/21) and crew cab (eta 5/15/21).

Going into the planning phase for the next budget year, Council may want to hold workshops as suggested by Staff to discuss wages and benefits, the true cost of new employees, expected increases in benefits, union negotiations, and other employee related issues such as retirement related costs as well as operational cost increases. You may also want to hold workshops to update the Capital Improvement Plan (C.I.P.) that is required annually to be updated.

The first official act in the annual budgeting process is to determine the proposed Maximum Millage to levy for Ad Valorem tax. That is the maximum Council wants to use in determining revenues needed to fund expenditures. The current millage rate is 2.3800. The Town's official population is 3,033. The 2020 gross taxable value for Malabar is \$278,348,531. That is based on assessment value of 2,271 parcels.

Town of Malabar
Budget vs. Actual

October 1, 2020 through March 11, 2021

	Oct 1, '20 - M...	Budget	% of Budget
Ordinary Income/Expense			
Income			
47900 - Revenue			
001-311.1000 Ad Valorem Taxes	587,906.63	632,515.00	92.9%
001-312.4000 Loca Op Gas Tax	31,880.99	94,048.00	33.9%
001-314.1000 Elec Util Tax	136,648.33	291,964.00	46.8%
001-314.4000 Gas Util Tax	5,018.91	12,000.00	41.8%
001-315.1000 Communi Ser. Tax	42,482.65	97,515.00	43.6%
001-316.1000 BTR - Malabar	17,457.29	20,500.00	85.2%
001-322.1000 Building Permits	79,801.73	175,000.00	45.6%
001-323.1000 Fran Fees Elec	91,544.79	200,000.00	45.8%
001-323.4000 Fran Fee Water	2,186.69	6,000.00	36.4%
001-323.7000 Fran WM	9,024.48	36,000.00	25.1%
001-329.1000 Land Use	2,700.00	5,000.00	54.0%
001-331.6200 FEMA Reimburse	0.00	3,762.00	0.0%
001-335.1200 FL Rev. Share	31,182.87	70,337.00	44.3%
001-335.1400 FL MH Tax	1,803.72	2,295.00	78.6%
001-335.1500 FL Alcoh Bev Lic	0.00	1,700.00	0.0%
001-335.1800 FL Loc Gov't 1/2	60,548.06	151,122.00	40.1%
001-335.4900 FDOT reimburse	0.00	7,653.00	0.0%
001-338.2000 BTR - Brev. Cty.	1,107.91	1,100.00	100.7%
001-349.2000 Cell Tower Lease	14,490.00	28,980.00	50.0%
001-349.5000 OCS Spec Evt Rev	175.00	4,000.00	4.4%
001-349.7010 Background Check	95.00	1,000.00	9.5%
001-349.8000 Paving Assessment	4,582.00	17,555.00	26.1%
001-349.8010 Golf Cart Regist	150.00	350.00	42.9%
001-349.9000 Lien Searches	2,580.00	3,000.00	86.0%
001-351.5000 Fines/Forfeiture	103.59	150.00	69.1%
001-361.1000 Interest	2,390.11	20,000.00	12.0%
001-363.1000 SW Assessment	111,514.97	128,953.00	86.5%
001-365.1000 Sale/Surp Mat	379.75	10,000.00	3.8%
001-366.1000 Donations FD	0.00	4,000.00	0.0%
001-369.3000 Settlements FMIT	0.00	3,500.00	0.0%
001-369.9000 Misc. Revenues	200.77	600.00	33.5%
001-389.3000 VFA State Grant	0.00	20,000.00	0.0%
001-389.5000 DEP Revolving Loan	50,778.00	105,123.00	48.3%
001-389.9020 TIFT Restricted	12,000.00	14,526.00	82.6%
001-389.9530 GF Reserve	0.00	180,385.00	0.0%
Total 47900 - Revenue	1,300,734.24	2,350,633.00	55.3%
Total Income	1,300,734.24	2,350,633.00	55.3%
Gross Profit	1,300,734.24	2,350,633.00	55.3%
Expense			
B Legislative			
001-511.3400 Contract Svcs - SC	8,468.29	15,000.00	56.5%
001-511.4000 Mayor Travel	840.00	1,500.00	56.0%
001-511.4010 Council Travel	0.00	2,500.00	0.0%
001-511.4100 Postage & PR	169.75	2,000.00	8.5%
001-511.5200 Operating Supplies	0.00	3,000.00	0.0%
Total B Legislative	9,478.04	24,000.00	39.5%
C Executive			

Town of Malabar
Budget vs. Actual
October 1, 2020 through March 11, 2021

	Oct 1, '20 - M...	Budget	% of Budget
001-512.1100 Executive TM	7,950.00	13,000.00	61.2%
001-512.1110 Town Manager (ITM)	27,000.00	65,000.00	41.5%
001-512.2100 FICA Taxes	2,181.22	5,967.00	36.6%
001-512.2200 Retire. Cont.-FRS	6,788.39	21,286.00	31.9%
001-512.2300 Life & Health Ins.	3,237.34	8,852.00	36.6%
001-512.2400 Workers Comp.	240.00	480.00	50.0%
001-512.4000 Travel Per Diem	1,850.00	2,500.00	74.0%
001-512.5200 Operating Expenses	186.78	5,000.00	3.7%
Total C Executive	49,433.73	122,085.00	40.5%
D Finance & Administration			
001-513.1100 Clerk/Treasurer	30,930.92	65,000.00	47.6%
001-513.1200 Dep Clerk/Treasurer	15,957.29	36,036.00	44.3%
001-513.1300 Reception/Clerical	7,406.63	17,160.00	43.2%
001-513.1400 Overtime	307.63	2,000.00	15.4%
001-513.2100 FICA Taxes	3,397.45	9,073.00	37.4%
001-513.2200 Retire. Contr. FRS	6,935.90	22,978.00	30.2%
001-513.2300 Life & Health Ins.	7,800.79	20,690.00	37.7%
001-513.2400 Workers Comp.	720.00	1,440.00	50.0%
001-513.3100 Election Expense	0.00	2,000.00	0.0%
001-513.3210 Auditing	3,000.00	21,000.00	14.3%
001-513.4000 Travel Per Diem	1,069.78	5,000.00	21.4%
001-513.4900 Other Curr. Ob	4,029.79	5,000.00	80.6%
001-513.5200 Operating Supplies	0.00	1,500.00	0.0%
Total D Finance & Administration	81,556.18	208,877.00	39.0%
E Legal			
001-514.3100 Prof. Services	12,750.00	30,000.00	42.5%
Total E Legal	12,750.00	30,000.00	42.5%
F Comprehensive Planning			
001-515.3100 Prof. Services	892.45	5,000.00	17.8%
Total F Comprehensive Planning	892.45	5,000.00	17.8%
G General Government			
001-519.3400 Pest Control Servi	522.45	1,400.00	37.3%
001-519.3420 IT/Web	6,058.57	10,000.00	60.6%
001-519.3460 Con Ser Condatore	780.00	2,500.00	31.2%
001-519.4100 Com/Frt-Phone/ISP	1,915.79	5,500.00	34.8%
001-519.4300 Utilities-Electric	1,129.19	2,300.00	49.1%
001-519.4400 Rentals & Leases	1,778.00	4,000.00	44.5%
001-519.4500 Insur PropLiab	17,446.00	32,314.00	54.0%
001-519.4600 Repairs & Main	3,157.42	5,000.00	63.1%
001-519.4900 Charges Obligation	564.79	2,000.00	28.2%
001-519.4920 Contingency	0.00	1,000.00	0.0%
001-519.5200 Operating Supplies	1,955.40	6,000.00	32.6%
Total G General Government	35,307.61	72,014.00	49.0%
H Fire Control			
001-522.1100 Exec-Fire Chief	21,576.61	47,000.00	45.9%
001-522.1200 Regular Salaries	106,560.46	225,531.00	47.2%

Town of Malabar
Budget vs. Actual
October 1, 2020 through March 11, 2021

	Oct 1, '20 - M...	Budget	% of Budget
001-522.1300 Holiday	6,308.16	8,000.00	78.9%
001-522.1400 Overtime	2,019.36	7,000.00	28.8%
001-522.1500 Special Pay	3,912.00	15,000.00	26.1%
001-522.2100 FICA Taxes	8,123.73	20,850.00	39.0%
001-522.2200 Retire. Cont. FRS	23,110.39	72,197.00	32.0%
001-522.2300 Life & Health Ins.	26,552.28	83,031.00	32.0%
001-522.2400 Workers Comp.	5,000.00	11,000.00	45.5%
001-522.3100 Cont. Prof. Ser.	235.00	5,000.00	4.7%
001-522.3420 IT, Cloud, Related	1,498.98	7,500.00	20.0%
001-522.3440 Contract Services	9,456.87	9,500.00	99.5%
001-522.3470 Con Ser 800 MHz	6,215.40	6,500.00	95.6%
001-522.3490 Con Ser Cty E911	9,500.00	9,500.00	100.0%
001-522.4100 Com & Frt Phone	3,443.77	5,000.00	68.9%
001-522.4300 Utilities-Elec	3,079.05	7,000.00	44.0%
001-522.4400 Rentals & Leases	2,510.27	3,984.00	63.0%
001-522.4600 Repairs/Maintance	13,322.46	30,000.00	44.4%
001-522.4615 Expend from Don.	145.22	5,000.00	2.9%
001-522.4620 Rep/Main Gr/Radio	4,114.53	7,000.00	58.8%
001-522.5100 Office Supplies	0.00	1,600.00	0.0%
001-522.5200 Oper Exp - Fuel	2,398.92	7,000.00	34.3%
001-522.5210 Operating Expenses	5,492.57	11,111.00	49.4%
001-522.5400 Book/Pub/Subsc/M...	400.00	600.00	66.7%
001-522.6300 Lease Purchase E99	49,696.00	49,696.00	100.0%
001-522.6400 Machinery & Equip	0.00	17,000.00	0.0%
001-522.8300 Grants	0.00	15,000.00	0.0%
Total H Fire Control	314,672.03	687,600.00	45.8%
I Protective Inspections			
001-524.1100 Exec-BO PT	6,193.20	17,280.00	35.8%
001-524.1110 Exec ITM	3,437.50	12,000.00	28.6%
001-524.1200 Regular Salaries	20,712.02	42,000.00	49.3%
001-524.1210 Permit Ck	2,344.50	12,960.00	18.1%
001-524.1300 PT Bldg Dept Admin	3,262.50	3,262.50	100.0%
001-524.1400 Overtime	265.17	4,000.00	6.6%
001-524.2100 FICA Taxes	1,943.40	6,444.00	30.2%
001-524.2200 Retire Cont FRS	1,442.32	6,696.00	21.5%
001-524.2300 Life & Health Ins.	3,274.21	18,225.00	18.0%
001-524.2400 Workers Comp.	1,200.00	2,880.00	41.7%
001-524.3100 Prof Ser Eng	4,380.00	12,000.00	36.5%
001-524.3110 Prof Ser Planner	1,267.45	9,000.00	14.1%
001-524.3120 Prof Legal	3,980.00	5,000.00	79.6%
001-524.3130 Part Time Asst	0.00	6,860.50	0.0%
001-524.3400 Pest	172.50	420.00	41.1%
001-524.3420 IT Services	4,584.06	5,000.00	91.7%
001-524.3440 Contracted Serv	1,394.72	4,000.00	34.9%
001-524.3460 Con Ser Clean	360.00	840.00	42.9%
001-524.4000 Travel Per Diem	0.00	1,000.00	0.0%
001-524.4100 Com & Frt Phone	1,247.71	3,000.00	41.6%
001-524.4300 Utilities Electric	508.57	1,200.00	42.4%
001-524.4400 Rentals & Leases	1,616.91	4,000.00	40.4%
001-524.4500 Ins Prop Liab	3,427.00	6,854.00	50.0%
001-524.4900 Other Cur Ob	2,161.35	3,000.00	72.0%
001-524.5200 Operating Expense	563.76	1,604.00	35.1%

Town of Malabar
Budget vs. Actual
October 1, 2020 through March 11, 2021

	Oct 1, '20 - M...	Budget	% of Budget
Total I Protective Inspections	69,738.85	189,526.00	36.8%
J Emergency/ Disaster Relief			
001-525.3010 COVID-19	1,100.98	0.00	100.0%
Total J Emergency/ Disaster Relief	1,100.98	0.00	100.0%
K Flood Control			
001-538.3100 Cont. Serv.-Eng.	348.00	5,000.00	7.0%
001-538.3400 OCS-Ad. Fees/Costs	9,913.31	18,052.00	54.9%
001-538.4900 Other Cur SW Proj	4,603.00	105,901.00	4.3%
001-538.6300 Infra SW Util Proj	63,658.35	105,123.00	60.6%
Total K Flood Control	78,522.66	234,076.00	33.5%
M Streets & Roads			
001-541.1100 Streets & Road Dir	24,202.08	50,470.00	48.0%
001-541.1200 Reg Sal & Wages	34,735.60	109,200.00	31.8%
001-541.1400 Overtime	53.28	1,000.00	5.3%
001-541.2100 FICA Taxes	3,468.74	12,215.00	28.4%
001-541.2200 Retire Cont FRS	4,196.57	15,967.00	26.3%
001-541.2300 Heath & Life Ins.	13,232.98	46,789.00	28.3%
001-541.2400 Workers Comp.	5,000.00	10,000.00	50.0%
001-541.4000 Travel Per Diem	0.00	1,000.00	0.0%
001-541.4300 St lights,signals	5,285.94	11,000.00	48.1%
001-541.4600 Repairs/Main Equip	15,848.18	45,000.00	35.2%
001-541.4610 Repairs/Main Roads	4,766.69	50,000.00	9.5%
001-541.4650 Rep/Main RR Signal	3,600.00	3,600.00	100.0%
001-541.4900 Other Cur Ob	450.61	2,000.00	22.5%
001-541.5200 Op. Supplies Fuel	4,455.01	12,000.00	37.1%
001-541.5210 Operating Sup	3,705.59	6,000.00	61.8%
001-541.6400 Machinery & Equip	37,074.21	37,075.00	100.0%
001-541.6410 Equipment Replacem	1,299.95	200,000.00	0.6%
001-541.6420 C.I.P. Road Paving	0.00	66,330.00	0.0%
Total M Streets & Roads	161,375.43	679,646.00	23.7%
N Parks & Recreation			
001-572.1200 Park & Rec Reg Sal	17,912.00	37,440.00	47.8%
001-572.1210 Temporary Worker	0.00	3,700.00	0.0%
001-572.1400 Parks & Rec OT	0.00	300.00	0.0%
001-572.2100 FICA Taxes	1,038.55	2,864.00	36.3%
001-572.2200 Retire Cont FRS	1,223.20	3,744.00	32.7%
001-572.2300 Health & Life Ins.	3,164.31	8,809.00	35.9%
001-572.2400 Workers Comp	240.00	480.00	50.0%
001-572.3400 Cont Serv Pest Con	199.95	1,200.00	16.7%
001-572.3460 Con Ser Cleaning	1,280.00	3,120.00	41.0%
001-572.4300 Utilities Electric	216.02	700.00	30.9%
001-572.4400 Rentals & Leases	538.08	1,300.00	41.4%
001-572.4600 Repairs/Main	4,045.15	15,000.00	27.0%
001-572.4900 Other Cur Ob	465.60	1,100.00	42.3%
001-572.4930 Other Cur Ob-T&G	17.99	10,000.00	0.2%
001-572.6400 Machinery & Equip	0.00	2,052.00	0.0%
Total N Parks & Recreation	30,340.85	91,809.00	33.0%

03/15/21
Accrual Basis

Town of Malabar
Budget vs. Actual
October 1, 2020 through March 11, 2021

	<u>Oct 1, '20 - M...</u>	<u>Budget</u>	<u>% of Budget</u>
O Special Events			
001-574.4800 Springfest Expense	978.46	6,000.00	16.3%
Total O Special Events	978.46	6,000.00	16.3%
Total Expense	846,147.27	2,350,633.00	36.0%
Net Ordinary Income	454,586.97	0.00	100.0%
Net Income	454,586.97	0.00	100.0%



A RECOVERY LANDSCAPE

FORECASTING FLORIDA MUNICIPAL REVENUE IMPACTS FROM COVID-19

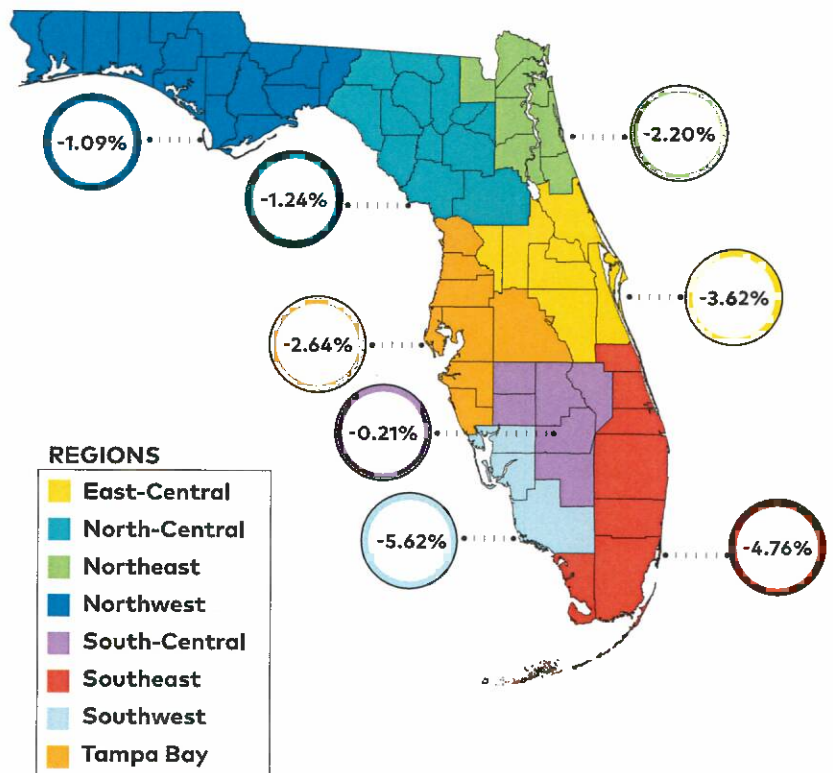
The Florida League of Cities report, *A Recovery Landscape – Forecasting Florida Municipal Revenue Impacts from COVID-19*, forecasts impacts to municipal revenue due to the pandemic through fiscal year 2023 for all 411 Florida municipal governments.

This report can be used as a planning tool to help guide policymakers with municipal finance decisions. Every municipal government's revenues will be affected differently by a host of economic factors. By historically examining the impact of local unemployment on municipal revenues from 2008 to 2018, this analysis offers new insights regarding what revenue streams may look like over the next few years.

KEY FINDINGS

- ▶ Florida cities are forecast to experience a **\$3.90 billion reduction in municipal revenues** over Fiscal Years 2021, 2022 and 2023.
- ▶ In FY 2021 alone, municipal revenues (excluding any property tax impacts) are projected to **decline by more than \$1.72 billion**.
- ▶ The variation in revenue impacts across the state is significant when looking at individual communities. **Some have forecast declines of up to nearly 20%**, while others are forecast to experience an incremental increase.
- ▶ **Large cities will be affected most.** Cities with populations greater than 100,000 are forecast to experience the largest revenue declines: 6.1% in FY 2021, 4.6% in FY 2022 and 3.2% in FY 2023.
- ▶ **Each region of the state will feel the impact of the pandemic differently.** Areas with an economy tied to tourism may take longer to recover. This longer recovery may also be true for areas that are more densely populated, as depicted in this map of forecast revenue impacts for FY 2021.

FY 2021 FORECAST REVENUE IMPACTS BY REGION



Investment update from Dana Investment Advisors

Dave Mazza <davem@danainvestment.com>

Wed 3/3/2021 12:13 PM

To: Debby Franklin <townclerk@townofmalabar.org>

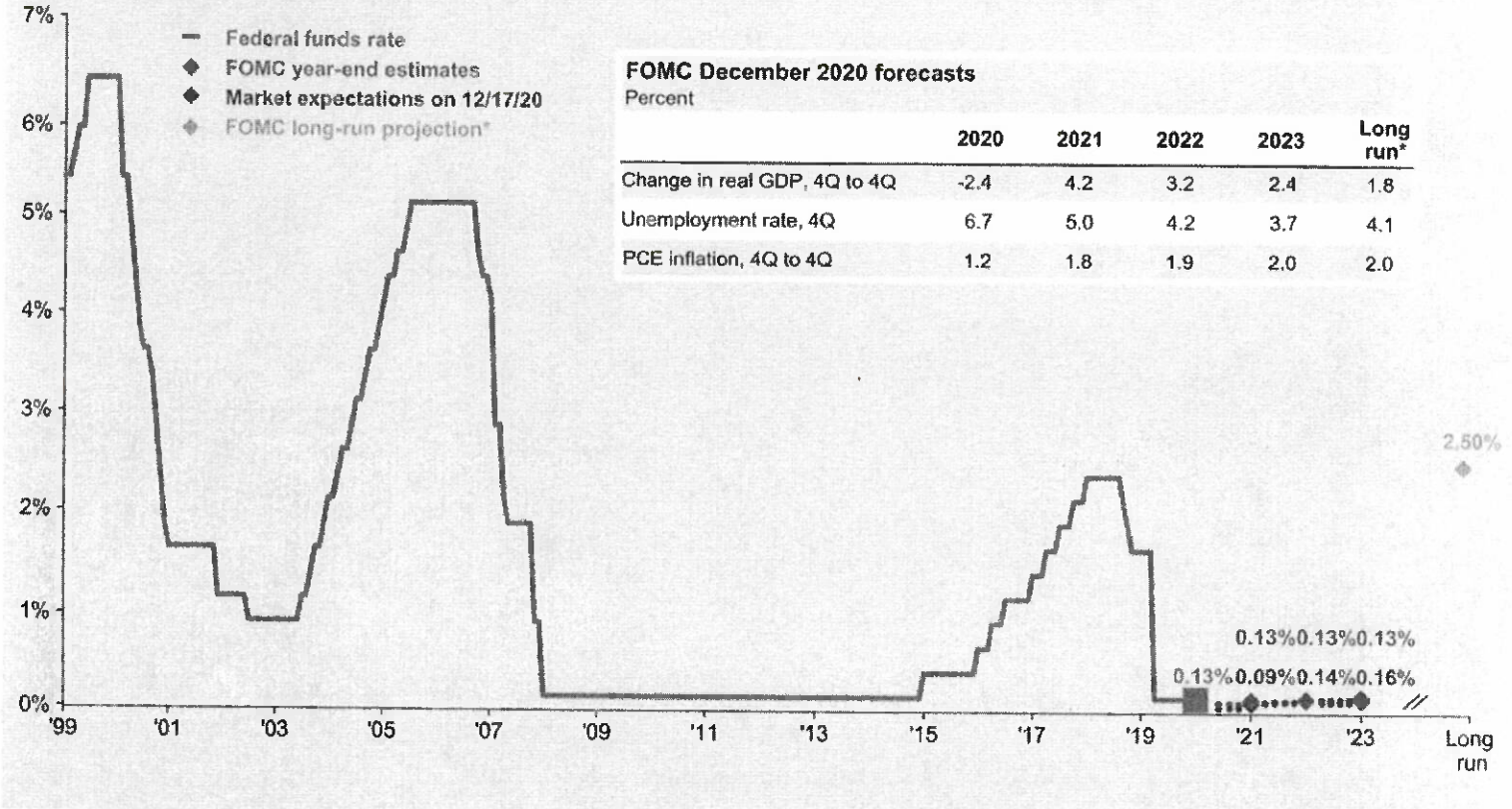
Debby and Lisa,

It was great seeing you both a couple weeks ago. Thanks again for your time!

As we discussed, the Town's investments did very well in 2020, especially given this extremely low rate environment. As we look at 2021 and beyond, Dana's portfolio managers see the prospect of higher rates on the horizon. Given the pandemic and its current effect on the economy, these higher rates may not be on the immediate horizon but the Federal Reserve has indicated their expectations for higher rates in the future (see chart below).

Federal funds rate expectations

FOMC and market expectations for the federal funds rate



In fact, the 10 Year U.S. Treasury rate has already moved from 0.54% last May to over 1.40% today. In order to not only protect the Town's portfolio but also allow it to participate in these higher rates, Dana's portfolio management team has allocated about 10% of the Town's investment portfolio to U.S. Government Agency adjustable rate securities. In rising rate environments, these adjustable rate securities help minimize price volatility and allow for higher income as their rates adjust to the higher rate environment. Thus expect to see Dana's portfolio managers take advantage of opportunities to increase the Town's allocation to these adjustable rate securities in order to keep the Town's investment portfolio diversified and limit price volatility.

Dave Mazza

Vice President - Director of Fixed Income Sales and Marketing | Dana Investment Advisors

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DANA Investment Advisors

P&I Nine Time Award Winner



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CAPITAL IMPROVEMENT PLAN - 5 YR SCHEDULE 2018 - 2022

CAPITAL IMPROVEMENT	YR	YEAR 1 FY2018	YEAR 2 FY2019	YEAR 3 FY2020	YEAR 4 FY2021	YEAR 5 FY2022	Projected Cost	NOTES / PROPOSED FUNDING SOURCES
COMMUNITY CENTER	2017				X			2725 Malabar bldg
SHARED TOWN HALL w/ EEL		X	X					EEL education Ctr \$, FEMA EOC \$ - continue plan
RIVER-FRONT-ACCESS			X					No public land
BASEBALL FIELD DUGOUTS AND CONCESSION STAND			X					Park & Rec Board to explore grant funding
COREY RIGHT TURN LANE			X	X	X			Will it improve safety - not part of FDOT project
WEBER RIGHT TURN LANE			X	X	X			Will it improve safety - not part of FDOT project
FIRE DEPT FLASHING LIGHT			X					TIFT \$ - Will FDOT permit?
RESURFACE WEST HALL				X				ANNUAL BUDGET
RESURFACE WEST ATZ			X					ANNUAL BUDGET
RESURFACE OLD MISSION			X					ANNUAL BUDGET
SW PROJECTS FROM 2014	X	X	X	X	X			In order or priority
NEW SLOPEMOWER	X	X						Purchased
Maintain existing SW infrastructure	X	X	X	X	X		\$56,300.00	Ongoing work, Storm water funding
S/E Rocky Pt. Rd. repairs to ROW	X	X					\$10,000.00	Out for bid, S/W funds or FEMA assistance

2 COUNCIL REPORT OVERVIEW
FOR THE MONTH OF FEBRUARY 2021

INCIDENT TYPE	WK OF: 02/01/21	02/08/21	02/15/21	02/22/21	00/00/21
<u>EMS</u>	2	6	5	7	
<u>MVA NO INJURIES</u>	1	1	1	1	
<u>*MVA INJURIES</u>		1	1		
<u>PUBLIC SERVICE</u>		2	2	2	
<u>PUBLIC SERVICE/ASSIST</u>					
<u>SMOKE SCARE</u>		1			
<u>DISPATCHED/CANCELED</u>	*4	5	5		
<i>Weekly Totals</i>	7	16	14	10	
TOTAL INCIDENTS: 47					

*MVA INJURIES: US1 & Malabar Rd

US1 & Township Rd

*: Palm Bay Calls

Town of Malabar Fire Department Status (February 2021)

Incident Response	Count	Percent
Unauthorized Burn	0	0%
EMS	20	43%
Vehicle accident with injuries	2	4%
Vehicle accident without injuries	4	9%
Public service	6	13%
Dispatched & canceled	14	30%
Smoke Scare	1	2%
	0	0%
	0	0%
	0	0%
	0	0%
Total Manhours	33	
Missed Responses	0	
Total Calls	47	
Total Yearly Responses	93	

Current Response (Minutes)	
Cum 2019	5
Malabar only response minutes	5
Active Members' Roster	22
Active Members' Additions	0
Active Members' Deletions	0
Department Growth	0
New Roster	22
Paid employees (not included in roster number)	10
Mutual Aid Calls	
Given to Palm Bay	0
Received from Palm Bay	0
Received from Palm Bay & Brevard	0
Given to Brevard	0
Given to Florida Forestry	0
Total Mutual Aid Incidents	0
Training Manhours	
In-house	16
Out-of house	0
Total Training Manhours	204

Training Manhours	
In-house	16
Out-of house	0
Total Training Manhours	204

**Town of Malabar
Fire Department Status (February 2021)**

Item	Vehicle ID #	County #	Mileage /	Engine hours /	maintenance done	Status
1	Chief's Car	(Fire-1)		PM Completed		Operational
2	2015 Chevy pick up					
	Utility 99		102870	Pm Completed		Operational
	Izuzu Trooper					
3	Engine-1		4539	391 In service		Operational
	2018 Pierce					
4	Engine-2	(Eng-299)	5301.3	3641.3	In Service as back up engine needs pump test done	Operational
	1997 E One					
5	Ladder-1	(L-99)	102856.2	12590.2	failed fuel line replaced -Failed pump test	OOS
	1993 Sutphen					
6	Squad-1	(SQ-99)	41572	2623.5	need new fire pump loosing cmprisson	Operational
	2007 Ford F550					
7	Tanker-1	(Tanker-99)	14679.7	1264.3	in service need pump test	Operational
	2006 Freightliner					
8	Brush-1	(B-99)	11750.9	5023.1	in service loaner from DOF	Operational
	1995 Military					
9	Brush 299	(299)	5703.9	9324.3		Operational
	1991 Military					
10	Brush 499 LMT	(499)			work in progress	work in progress
	1977 Military					
General Comments/Special Tasks						
1	Palm Bay Fire Rescue will be filling our Oxygen Bottles savings of \$65:00a month					on going
2	Progression on inventory list					up dating
3	Tender 99 needs new discharg ports on the sides rusting					get quotes
4	Forrestry 50/50 grant for gear is reapplied for					in progress
5	Received two new suction units do to CARSE ACT savings of \$9000.00 dollars					received
6	Old Engine 99 out of service unable to find parts /engine too old					out of service
7	Brush Truck 99 in service					in service
8	Hydrent testing is completed					completed
9	NEW Fire Truck in service					6/12/2018
10	State Fire Marshall safety held and 100% compliant					completed
11	New brush truck being Assembled right now					in progress
12	New Engine 99 was reared by Ten 8 in house all issues addressed hand recall on DEF system					in service
13	up dating SOP's policies					in progress
14	Starting Pre plans in the month of Janu completed					completed
15						

Malabar - January & February 2021

Call Type	Call Count
73	362
911 Hangup	9
911 Misdial	17
911 Open Line	7
Alarm Business	1
Alarm Residence	3
AOA	6
Assault	1
Assist Citizen	6
Assist DCF	1
Assist Motorist/Disabled Vehi	9
ATC	7
Baker Act	1
Battery	1
Burglary	1
Citizen Contact	3
Civil Matter	1
Civil Process Sworn	1
Crash Hit & Run	3
Deceased Person	1
Disturbance	13
Fire	3
Fraud/Forgery	6
Illegal Dumping	1
Illegal Parking	1
Information	5
Injured/Ill Person	2
Mentally Ill	1
Overdose	1
Phone Call Obscene/Threat/t	1
Private Investigator In Area	1
Property Found	1
Reckless Driving	15
Sex Offender Address Verify	7
Shooting In Area	2
Special Detail On Duty	1
Standby-Keep Peace/Pickup	1
Suicide Threat	1
Suspicious Incident	11
Suspicious Person	14
Suspicious Vehicle	7

Theft	1
Traffic Complaint	9
Traffic Enforcement	60
Traffic Obstruction On Roadv	3
Trespassing	3
TS	105
Vehicle Abandoned	1
Vehicle Inspection	2
Vehicle Repo/Tow	1
Wanted Person	3
73_	56
911 Hangup	1
911 Misdial	3
Alarm Residence	1
Animal Complaint	1
AOA	1
Assist Motorist/Disabled Vehi	6
Baker Act	1
Disturbance	1
Fire	1
Information	1
Investigation	1
Mentally Ill	1
Reckless Driving	9
Sex Offender Address Verify	2
Standby-Keep Peace/Pickup	1
Suspicious Incident	1
Suspicious Person	2
Suspicious Vehicle	2
Tag Stolen	1
Traffic Enforcement	4
Traffic Obstruction On Roadv	4
TS	11
Total	418

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 8.a.
Meeting Date: March 15, 2021

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 was originally before Council on May 6, 2019 for consideration of an request for action on "access" to the applicant's 20-acre parcel that lies approximately 330 feet west of Corey Road in line with the previously discussed "Beekeeper" ROW and the existing unimproved ROW in line with Old Mission.

The applicant bought a 20-acre parcel that lies between the platted ROW identified as Old Mission on the north side and the vacated platted ROW known as Alabama on the south side. He had originally approached the Town in 2014 on reversing the "ROW vacate" the Council approved of Alabama Lane that would have provided access to applicant's parcel. The Town Attorney provided a legal memo stating the Town could not reverse a ROW vacate.

Background provided to Council on May 6, 2019:

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. The item was tabled with a verbal that Council would take the issue up again in the future.

- 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.

Current Situation:

Council now has a "Waiver" request and the applicant is asking for a "waiver" to the road improvement requirement in Chapter 13 of the Malabar Code.

This was formally legally advertised in Florida today for a Public Hearing as required by the "Road Waiver" process.

ATTACHMENTS:

Portion of "Approved RTCM minutes from 5/6/2019
Applicant's application from 5/6/2019 from parcel owner, Chris Thomas
Memo dated 11/13/2017 from Town Attorney Karl Bohne
Agenda Face Sheet and Agenda Report from the 5/6/2019 meeting

ACTION OPTIONS:

Direction from Council on if a "Waiver" could be granted with conditions for this applicant.

Portion of approved RTCM minutes from May 6, 2019 that was discussed under "ACTION/MISC" on the agenda.

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

Exhibit: Agenda Report No. 7

Recommendation: Action – direction to staff

Request deals with access maintaining the current roadway. Without impacting wetlands. If he has to build the mitigation credit cost of 160K so wife and he can build a road.

Atty said years ago we had a variance procedure. No mechanism to deal with this. Bringing back the variance procedures will be part of the road workshop. Build the road and that would be an extreme hardship. We will cover this in our workshop.

Mayor asked what the solution. Use the existing roadway.

CM Ball said what about eminent domain. Can't we buy the Alabama ROW that Council vacated back? Could be very expensive.

CM Vail said he was opposed to variance procedures because that burden is place on the next parcel owner. He said there are too many short roads. The road workshop we are going to talk about and how we are going to deal with these unique situations.

Obligation to develop for the future. We are making decisions that will impact people in the future. Atty would rather table it until after the workshop.

MOTION: CM Vail / CM White to table it. **Vote:** Ayes, 4; Nay, 0 (CM Korn excused)

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

Waiver to Road Improvement

~~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 _____, Subdivision Pb1 Pg165

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



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

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 3420 - 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

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.

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 Administrative 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.

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 inconvenient 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.

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, MAY 06, 2019
7:30 PM
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

- A. **CALL TO ORDER, PRAYER AND PLEDGE**
- B. **ROLL CALL**
- C. **APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:**
- D. **CONSENT AGENDA:**
 - 1. **Approve Regular Town Council Mtg Minutes of 4/15/2019 & Workshop Mtg 4/29/2019**
Exhibit: Agenda Report No. 1
Recommendation: Approve Minutes
- E. **ATTORNEY REPORT:**
- F. **BCSO REPORT:**
- G. **BOARD / COMMITTEE REPORTS:**
T&G Committee; Park & Recreation Board; P&Z Board
- H. **STAFF REPORTS:** PW Director; Fire Chief; Clerk
- 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.**
- J. **PUBLIC HEARINGS: 0**

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

- 2. **Request Malabar Declare Sand Hill Cranes a Protected Species**
Resident Lloyd Behrendt – Agenda Request Form
Exhibit: Agenda Request Form 2
Recommendation: Direction to Staff

PRESENTATION:

- 3. **Henry Morin on Proposed Land Use Designation to CG for Parcel 568 at NE Corner of Babcock and Osage Street**
Exhibit: Agenda Report No. 3
Recommendation: Action – direction to Applicant

- L. **ACTION ITEMS: ORDINANCES for FIRST READING: 0**
RESOLUTIONS: 2

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

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 TO THE IMPORTANCE OF REDUCING TMDL IN THE IRL; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

- Exhibit: Agenda Report No. 4
- Recommendation: Adopt Reso 06-2019

5. Amend Administrative Fees (Reso 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 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 AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Approve Reso 07-2019

MISCELLANEOUS: 3

6. 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

Exhibit: Agenda Report No. 6

Recommendation: Action – direction to staff

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

Exhibit: Agenda Report No. 7

Recommendation: Action – direction to staff

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

Exhibit: Agenda Report No. 8

Recommendation: Action – direction to staff

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

M. DISCUSSION/POSSIBLE ACTION: 2

9. Discussion on Special Assessment

10. Discussion on Possible Ordinance regarding Public Notices

N. PUBLIC COMMENTS: General Items (Speaker Card Required)

O. REPORTS – MAYOR AND COUNCIL MEMBERS

P. ANNOUNCEMENTS:

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

Q. 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.

**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

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

To: brelegals@gannett.com

February 19, 2021

From: Debby Franklin, Town Clerk, Town of Malabar, Acct # 126287

Please place the following legal ad one time on Thursday, February 25, 2021. Please put the heading in **BOLD** font. Please send proof via email to: townclerk@townofmalabar.org and mail ONE affidavit to 2725 Malabar Road, Malabar, FL 32950.

**TOWN OF MALABAR
NOTICE OF PUBLIC HEARING**

The Malabar Town Council, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, **March 15, 2021**, or as soon thereafter as the matter can be heard, for a public hearing on the following topic: Determination of "access" to 20-acre parcel west of Corey Road in line with Beekeeper Lane with conditions. This request was originally heard by Malabar Council as an "Action Item" on May 6, 2019 with the request being to use the existing but unimproved right-of-way running west from Corey Road adjacent to Beekeeper Lane in order to access parcel 751 to build a single family home. The Council tabled the issue and it was never brought back.

ROAD IMPROVEMENT WAIVER REQUEST

A REQUEST FOR A WAIVER TO THE ROAD IMPROVEMENT REQUIREMENTS IN CHAPTER 13 OF THE MALABAR CODE OF ORDINANCES REGARDING THE UNIMPROVED, UNNAMED PLATTED RIGHT OF WAY RUNNING WEST FROM COREY ROAD IN LINE WITH OLD MISSION R-O-W IN SECTION 11, TOWNSHIP 29, RANGE 37, TO ACCESS PARCEL 751, A 20-ACRE PARCEL SOUTH OF MALABAR ROAD, WITHIN THE TOWN OF MALABAR. REQUEST BY CHRISTOPHER AND STACY THOMAS, OWNER OF PARCEL 29-37-11-00-751.

Copies of this application request are available in the Clerk's office for review, 2725 Malabar Road, Malabar, Florida, during regular business hours. All interested parties may email comments to townclerk@townofmalabar.org or mail comments to 2725 Malabar Road, Malabar, FL 32950 or appear and be heard at this meeting of the Town Council with respect to this topic. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Debby Franklin, CMC, Town Clerk/Treasurer

March 15th - RSTM - Request from Chris Thomas for tabled item from May 2019

Lisa Morrell <LMorrell@townofmalabar.org>

Fri 2/19/2021 12:34 PM

To: Brian Vail <cmdist2@townofmalabar.org>; Danny White <cmdist5@townofmalabar.org>; David Scardino <cmdist4@townofmalabar.org>; Marisa Acquaviva <cmdist1@townofmalabar.org>; Pat Reilly <mayor@townofmalabar.org>; Steve Rivet <cmdist3@townofmalabar.org>

Cc: kbohne@fla-lawyers.com <kbohne@fla-lawyers.com>; Debby Franklin <townclerk@townofmalabar.org>

 1 attachments (1 MB)

Chris Thomas access to parcel 751.pdf;

Good afternoon Town Council Members,

For your advisement, Mr. Thomas contacted my office this week in reference to his tabled item from May 2019 regarding a waiver for road improvements for development of his 20 acre parcel for a single family home on Beekeeper Lane. This property is to the west of Corey Road, the opposite direction of Mr. Hayward's location and request.

It will be advertised for March 15th's Meeting as public hearing. As many of you were not members of the council at that time, I have attached the 2019 packet for your review in advance.

Thank you,

Lisa Morrell
Interim Town Manager
Town of Malabar
321-727-7764

www.townofmalabar.org

TOWN OF MALABAR

COUNCIL MEETING

AENDA ITEM NO: 8.b.
Meeting Date: March 15, 2021

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

SUBJECT: Ordinance 2021-02 Adopting the Large-Scale Amendment #2021-01 to the Comprehensive Plan for Future Land Use Element and the LDC to provide for the maximum building coverage to be 20% of the gross lot size and delete the reference to 4,000sf in the mixed use designation of Residential/Limited Commercial in Table 1-3.3(A).

BACKGROUND/HISTORY:

The issue of how to regulate development on those properties designated as R/LC has been conflicted with the Table in the LDC within Article III, District Provisions, subsection (O) and the Table 1-3.3(A) that state both 20% and 4,000sf as the maximum building coverage.

The Town's Local Land Planning Agency (Planning and Zoning Board) has recommended Council support the 20% maximum building coverage and delete the 4,000sf maximum building coverage. This has been discussed and debated and legally advertised for several public hearings after the R/LC designation was expanded from only on Highway 1 to additional parcels fronting Malabar Road and Babcock Road.

The State Department of Economic Opportunity had previously approved such expansion of the land use but multiple parcels fronting Malabar road are in excess of 20,000sf and the 4,000sf maximum building coverage was not equitable.

Malabar Council accepted the recommendation from the Planning and Zoning Board and requests this ordinance to be reviewed under the "expedited review process" by the Florida DEO and allow Malabar to adopt the amendment to the Comp Plan and amendment to the Town's LDC.

ATTACHMENTS:

Ord 2021-02
Memo 21-BDM-011 with recommendation

ACTION OPTIONS:

Action on Ord 2021-02 to transmit to the Florida DEO for expedited review

ORDINANCE 2021-02

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

Whereas, the Town of Malabar adopted a Comprehensive Plan amendment in 2019 that provided for the mixed use designation of Residential/Limited Commercial (R/LC) to be expanded from the previously Highway 1 locations to also allow such development along Malabar Road and Babcock Street; and

Whereas, the Town of Malabar desires to allow a development to utilize twenty percent (20%) of the gross lot size and delete the reference to the maximum of 4,000sf stated in Chapter 1 of the Comp Plan adopted a Comprehensive Plan amendment in 2019 that provided for the mixed use

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

Section 1. Section 1-2.2.6 (b) of the Town's Comprehensive Plan, Element/Chapter 1, Future Land Use Designation for Residential and Limited Commercial (R/LC) development amended to read as follows:

.....

1-2.2.6 Policy:

Criteria for the Residential and Limited Commercial Development R/LC Designation. The following criteria for development within the R/LC FLUM designation shall be incorporated into the Town of Malabar Land Development Regulations:

.....

b. *Limited Commercial Uses.* Limited Commercial uses with the R/LC FLUM designation shall have ~~a minimum floor area of nine hundred (900) square feet and a maximum of four thousand (4,000) square feet~~ permitted maximum building coverage of twenty percent (20%) of the gross lot size.

.....

Section 2. Section 1-3.1. Purpose and Intent of Districts, of Article III, District Provisions, of the Land Development Code to read as follows:

.....

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

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

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities ~~with a floor area in excess of four thousand (4,000) square feet~~, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops ~~since the former would usually require a floor area larger than four thousand (4,000) square feet~~; would generally carry a relatively larger inventory; and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large-scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposal containers and/or providing drive-in facilities.

.....

Section 3. Table 1-3.3. (A) of Article III of the Town's Land Development Code is amended to delete the Maximum Building Size and read as follows:

Table 1-3.3(A) Size and Dimension regulations

Zoning District	Minimum Lot (1)			Maximum Height (ft./stories)	Minimum (sq. ft.) Commercial sq ft	Setback (ft.)(2)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (I)	Side (C)				
R/LC	20,000	100	150	35/3	900sf Max 4,000sf	50	25	10	20		20%	35	6

.....

Section 4. Severability. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this ordinance 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 be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 5. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 6. Codification. The provisions Section 2 and Section 3 of this ordinance shall become part of the Land Development Code of the Town of Malabar.

Section 7. Effective Date. The effective date of this plan amendment, if the amendment is not timely challenged, shall be the date the state land planning agency posts a notice of intent determining that this amendment is in compliance. If the amendment is timely challenged, or if the state land planning agency issues a notice of intent determining that this amendment is not in compliance, this amendment shall become effective on the date the state land planning agency or the Administration Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective.

The foregoing Ordinance was moved for Final approval and forward to the State 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 David Scardino	_____
Council Member Danny White	_____

This ordinance was then declared to be approved for transmittal this ____ day of _____, 2021.

TOWN OF MALABAR

Mayor Patrick T. Reilly,
Council Chair

(seal)

ATTEST

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

P&Z Board Review: 02/24/2021

Transmittal Council Reading: 3/15/2021

Adoption Second Reading: 6/21/2021 Vote: Ayes; Nays. Motion x to x

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

DRAFT

TOWN OF MALABAR

MEMORANDUM

Date: December 18, 2020 21-BDM-011

To: Town Council
Debby Franklin, Town Clerk/Treasurer

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

Ref: Amending District Provisions Article III Table 1-3.3(A) for R/LC Maximum Building Coverage area 4,000 sq feet vs 20% coverage area.

At the Planning and Zoning Meeting of 12/15/2020 the Board discussed the Agenda Item for the Amending Maximum Coverage area for R/LC the following Motion was made:

Motion: Foster/Ritter Recommended to Town Council to Amend the Comp Plan & LDC to remove the 4,000 sq. ft Building Coverage in the R/LC mixed use development and maintain 20% maximum lot coverage. All Vote, Roll Call Vote:

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

Motion Approved 4 to 1

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.a.

Meeting Date: March 15, 2021

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

SUBJECT: Cancel or Reschedule 1st meeting in April 2021

BACKGROUND/HISTORY:

This upcoming April 5, 2021 meeting poses a scheduling conflict for both the Town Clerk and the Interim Town Manager.

We request that Council support and direct the cancellation of this meeting or agree to reschedule the meeting for the following Monday, April 12, 2021.

At this point we have no standing agenda items that would require hearing on April 5, 2021.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Draft April calendar

ACTION OPTIONS:

Direction to Staff

Malabar April 2021

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5 RTCM 7:30PM	6	7	8	9	10
11	12 T&G Committee 6PM	13	14 P&Z Bd 6PM	15	16	17
18	19 RTCM 7:30PM	20	21 Park & Rec Bd 6PM	22	23	24
25	26	27	28 P&Z Bd 6PM	29	30	

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 11.a
Meeting Date: March 15, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Code Enforcement/Compliance Discussion (White & Scardino)

BACKGROUND/HISTORY:

As discussed at the March 1, 2021 meeting under council reports, the topic of desired level of code compliance and enforcement for discussion.

Included for Town Council's discussion is the Town of Malabar's Code of Ordinances – Part II, Article VII, entitled Code Enforcement Provisions. It is the intent of this article to promote, protect, and improve the health, safety, and welfare of the citizens of the town, by creating a code enforcement system which gives special masters authority to hold hearings and assess fines against violators of the town codes and ordinances providing an equitable, expeditious, effective, and inexpensive method of enforcing the codes and ordinances in force in the town, where a pending or repeat violation continues to exist. The current direction from Town Council is to seek compliance of the adopted codes through a constituent report driven methodology.

Additionally, the Florida State Statute, Chapter 162 entitled County or Municipal Code Enforcement has been included as additional background on the administrative process of establishing a local code enforcement board and procedures for hearings and notices. Part II of the chapter continues to provide supplemental procedures for the duties and administration of the county or municipal.

ATTACHMENTS:

Malabar, FL Code of Ordinances - PT II Article VII Code Enforcement Provisions.PDF
FSS Chapter 162 County or Municipal Code Enforcement.PDF

ACTION OPTIONS:

As directed by council discussion.

ARTICLE VII. - CODE ENFORCEMENT PROVISIONS

Footnotes:

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Editor's note— Ord. No. 01-01, § 1-21, repealed §§ 2-201—2-205 in their entirety. Further, Ord. No. 00-5, § 1, adopted June 19, 2000, amended the title of article VII to read as herein set out. Also, said ordinance amended article VII in its entirety. Said ordinance provisions have been included as §§ 2-201—2-210 to read as herein set out. Formerly, the repealed sections pertained to similar subject matter. See the Code Comparative Table.

DIVISION 1. - SPECIAL MASTER

Sec. 2-201. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

Code inspector or *code officer* means any designated employee or agent of the town whose duty it is to enforce the codes and ordinances enacted by the town.

Enforcement board means the code enforcement board of the town. Pursuant to F.S. § 162.03(2) the special master shall have the same status as the enforcement board.

Law enforcement officer means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic or highway laws of the state.

Person means any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, government agency, public subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally.

Repeat violation means a violation of a provision of a code or ordinance by a person the special master has previously found to have violated or who has admitted violating the same provision within five (5) years prior to the current violation, notwithstanding the violations occur at different locations.

Special master means a person authorized to hold hearings and assess fines against violators of the town codes and ordinances in accordance with F.S. Ch. 162.

Town means the Town of Malabar.

Town attorney means the legal counselor for the town, duly appointed as town attorney.

(Ord. No. 00-5, § 1, 6-19-00)

Sec. 2-202. - Authority and intent.

- (a) This article is adopted by the town council, upon authorization to create a code enforcement board and special masters pursuant to the authority granted municipalities in F.S. § 162.
- (b) It is the intent of this article to promote, protect, and improve the health, safety, and welfare of the citizens of the town, by creating a code enforcement system which gives special masters authority to hold hearings and assess fines against violators of the town codes and ordinances providing an equitable, expeditious, effective, and inexpensive method of enforcing the codes and ordinances in force in the town, where a pending or repeat violation continues to exist.

(Ord. No. 00-5, § 1, 6-19-00)

Sec. 2-203. - Special master creation and organization.

- (a) *Creation.* There is hereby created a code enforcement special master of the town under authority of F.S. § 162. Said special master shall have the authority to enforce the codes and ordinances of the town as provided in this article when violations of the codes are not corrected following initial action by the code inspector.
- (b) *Appointment of the special master.* The town administrator shall select from a list of qualified candidates the best person to hold such office and present such person(s) as the code enforcement special master of the town for approval by the town council.
- (c) *Removal from office.* The special master may be suspended and removed from office by the town council without cause, unless otherwise agreed by written contract.
- (d) *Rules of procedure and compensation.* The special master may establish such rules for the conduct of the hearings as deemed necessary; provided, however, that no such rules of procedure may conflict with this article or F.S. § 162. The special master shall be compensated as determined by the town.

(Ord. No. 00-5, § 1, 6-19-00)

Sec. 2-204. - Enforcement procedures and notices.

- (a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes and ordinances of the town. At no time may special master initiate enforcement proceedings.
- (b) Except as provided in subsections (c) and (d), if the violation of the codes is found, the code inspector shall notify the violator and give him a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall at his discretion issue a citation in accordance with part II or notify the special master and request a hearing. If requested the special master shall schedule a hearing, and written notice of such hearing shall be mailed to or served upon the violator as provided in this chapter and F.S. § 162.12. At the option of the special master, notice may additionally be served by publication or posting as provided by law in accordance with F.S. § 162.12. If the violation is corrected and then

reoccurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the special master even if the violation has been corrected prior to the hearing, and the notice shall so state.

- (c) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation shall notify the special master and request a hearing. The special master shall provide notice as prescribed by this chapter and F.S. § 162.12. The case may be presented to the special master even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the special master retains the right to schedule a hearing to determine the cost and impose a payment of reasonable enforcement fees upon repeat violator. The repeat violator may choose to waive his or her right to this hearing and pay said cost as determined by the special master.
- (d) If the code inspector has reason to believe that a violation presents a serious threat to the public health, safety and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the special master and request a hearing.
- (e) If the owner of the property which is subject to an enforcement proceeding before the special master or a court transfers ownership of such property between the time the initial pleading was served and the time of hearing, such owner shall:
 - (1) Disclose, in writing, the existence and nature of proceeding to the prospective transferee.
 - (2) Deliver to prospective transferee a copy of the pleading notices and other materials relating to the code enforcement proceedings received by the transferee.
 - (3) Disclose, in writing, to the prospective transferee, that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
 - (4) File a notice with the code enforcement official of the transfer of property, with the identity and address of the new owner, copies of the disclosures made to the new owner, within five (5) days after date of the transfer. A failure to make the disclosure described in paragraphs (1) —(3) creates a rebuttal assumption of fraud. If the property is transferred before a hearing, the proceedings shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct violation before said hearing is held.
- (f) All notices required by this part shall be provided to the alleged violator pursuant to F.S. § 162.12.

(Ord. No. 00-5, § 1, 6-19-00)

Sec. 2-205 - Conduct of hearing and appeal.

- (a) *Administrative procedures.* Upon request of the code inspector, or at such other time as may be necessary, the special master may call a hearing. The special master shall cause minutes to be

kept of all hearings by the special master, and all hearings and records of the special master shall be open to the public. The town council shall provide clerical and administrative personnel as may be reasonably required by the special master for the proper performance of designated duties. The special master may, at any hearing, set future hearing dates and may postpone or continue any matter before him to a future date.

- (b) *Representation.* Each case before the special master shall be presented either by the town attorney, by the code inspector or by the town administrator or his designee. If the town prevails in prosecuting a case it shall be entitled to recover all costs incurred in prosecuting the case before the special master and such costs may be included in the lien authorized by F.S. § 162.07(2). Any person accused of a violation may be represented by counsel at the hearing.
- (c) *Order of procedure and rules of evidence.* At any given hearing, the special master shall first take testimony and receive evidence from the town, and the town shall have the burden of proving the existence of the alleged violation by the preponderance of the evidence. If the evidence presented by the town establishes a prima facie case, the special master shall then proceed to receive evidence and testimony from the alleged violator. Formal rules of evidence shall not apply, but fundamental procedural due process shall be observed and shall govern the said proceedings. All testimony shall be under oath and recorded.
- (d) *Findings and orders.* At the conclusion of the hearing, the special master shall make a finding of fact, based on the evidence of record, and conclusions of law, and shall issue an order affording such relief as may be consistent with the powers granted herein. The findings and order shall be presented in written form and shall be served personally or by certified mail/return receipt requested upon the violator. The order may include a notice that the order must be complied with by a specific date and that a fine may be imposed if the order is not complied with by said date as provided in section 2-207 and F.S. § 162.09(1), the order may specify the amount of the fine to be imposed and the date on which the fine will commence if the violation is not corrected. The cost of repairs may be included along with the fine if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to all subsequent purchases, successors in interest, or as assigns, if the violation concerns with real property and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchases, successors in interests, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the special master shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance provided by the general laws of Florida applicable to code enforcement.
- (e) *[Appeals.]* An aggrieved party, including the town council may appeal a final administrative order of the special master to the circuit court. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special master. An appeal shall be

filed within thirty (30) days of the execution of the order to be appealed.

(Ord. No. 00-5, § 1, 6-19-00)

Sec. 2-206. - Powers of the special master with respect to hearings.

With respect to any hearing the special master shall have the following powers:

- (1) Adopt rules for the conduct of the hearing.
- (2) Subpoena alleged violators and witnesses to the hearing. Pursuant to F.S. § 162.08.
- (3) Subpoena evidence to its hearing.
- (4) Take testimony under oath.
- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

(Ord. No. 00-5, § 1, 6-19-00)

Sec. 2-207. - Administrative fines; cost of repairs; liens.

(a) The special master, may either in the initial order or upon notification by code enforcement officer that an order has not been compiled with or finding that a repeat violation has been committed, order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the special master for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the special master finds that the violation is a violation described in section 2-204(d), the special master shall notify the town of such findings. The town shall then have the right and power to make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the town to make further repairs or to maintain the property and does not create any liability against the town for any damages to the property if such repairs were completed in good faith. If a finding of a violation or repeat violation has been made as provided by this part, a hearing shall not be necessary for issuance of the order imposing the fine, If, after due notice and hearing, the special master finds a violation to be irreparable or irreversible in nature, he may order the violator to pay a fine as specified in section 2-207(b).

(b) Fines.

- (1) A fine imposed pursuant to this section shall not exceed two hundred fifty dollars (\$250.00) per day for a first violation and shall not exceed five hundred dollars (\$500.00) per day for a repeat violation, and in addition, may include all cost of repairs pursuant to this section and

section 2-207(b). However, if the special master finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed five thousand dollars (\$5,000.00) per violation.

- (2) In determining the amount of the fine, if any, the special master shall consider the following factors:
 - a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation;
 - c. Any previous violations committed by the violator.
- (c) The special master may reduce a fine imposed pursuant to this section. If a violator desires to request reconsideration of a fine, the following procedures must be followed:
 - (1) Any order issued to the violator must be complied with.
 - (2) A written request must be made to the code inspector for an inspection for compliance with the order issued.
 - (3) After the code inspector has certified in writing that the prior order of the special master has been complied with, the violator must, within twenty (20) days of such certification by the code inspector, request in writing to the code inspector, reconsideration of the fine by the special master.
- (d) A certified copy of an order imposing a fine, or a fine plus repair cost may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgement by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgement except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgement is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the town, and the town may execute a satisfaction or release of lien entered pursuant to this section. After three (3) months from the filing of any such lien which remains unpaid, the special master may authorize the town attorney to foreclose on the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead.

(Ord. No. 00-5, § 1, 6-19-00)

DIVISION 2. - RESERVED

Footnotes:

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Editor's note— Ord. No. 2017-05, § 2, adopted May 15, 2017, repealed Div. 2, § 2-208—2-210, which pertained to Citations and derived from Ord. No. 00-5, § 1, adopted June 19, 2000.

Secs. 2-208—2-210. - Reserved.

The 2020 Florida Statutes

[Title XI](#)
COUNTY ORGANIZATION AND
INTERGOVERNMENTAL RELATIONS

[Chapter 162](#)
COUNTY OR MUNICIPAL CODE
ENFORCEMENT

[View Entire
Chapter](#)

CHAPTER 162
COUNTY OR MUNICIPAL CODE ENFORCEMENT

PART I
LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS
(ss. 162.01-162.13)

PART II
SUPPLEMENTAL COUNTY OR MUNICIPAL CODE OR ORDINANCE ENFORCEMENT
PROCEDURES
(ss. 162.21-162.30)

PART I
LOCAL GOVERNMENT CODE
ENFORCEMENT BOARDS

- 162.01 Short title.
- 162.02 Intent.
- 162.03 Applicability.
- 162.04 Definitions.
- 162.05 Local government code enforcement boards; organization.
- 162.06 Enforcement procedure.
- 162.07 Conduct of hearing.
- 162.08 Powers of enforcement boards.
- 162.09 Administrative fines; costs of repair; liens.
- 162.10 Duration of lien.
- 162.11 Appeals.
- 162.12 Notices.
- 162.125 Actions for money judgments under this chapter; limitation.
- 162.13 Provisions of act supplemental.

162.01 Short title.—Sections 162.01-162.13 may be cited as the “Local Government Code Enforcement Boards Act.”

History.—s. 1, ch. 80-300; s. 72, ch. 81-259; s. 1, ch. 82-37.

Note.—Former s. 166.051.

162.02 Intent.—It is the intent of this part to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious,

effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist.

History.—s. 1, ch. 80-300; s. 2, ch. 82-37; s. 1, ch. 85-150; s. 1, ch. 86-201; s. 1, ch. 89-268.

Note.—Former s. 166.052.

162.03 Applicability.—

(1) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein.

(2) A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter. References in this chapter to an enforcement board, except in s. 162.05, shall include a special magistrate if the context permits.

History.—ss. 1, 2, ch. 80-300; s. 3, ch. 82-37; s. 2, ch. 86-201; s. 1, ch. 87-129; s. 2, ch. 89-268; s. 2, ch. 99-360; s. 63, ch. 2004-11.

Note.—Former s. 166.053.

162.04 Definitions.—As used in ss. 162.01-162.13, the term:

(1) “Local governing body” means the governing body of the county or municipality, however designated.

(2) “Code inspector” means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

(3) “Local governing body attorney” means the legal counselor for the county or municipality.

(4) “Enforcement board” means a local government code enforcement board.

(5) “Repeat violation” means a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

History.—s. 1, ch. 80-300; s. 4, ch. 82-37; s. 10, ch. 83-216; s. 3, ch. 86-201; s. 3, ch. 89-268; s. 3, ch. 99-360; s. 22, ch. 2001-60.

Note.—Former s. 166.054.

162.05 Local government code enforcement boards; organization.—

(1) The local governing body may appoint one or more code enforcement boards and legal counsel for the enforcement boards. The local governing body of a county or a municipality that has a population of less than 5,000 persons may appoint five-member or seven-member code enforcement boards. The local governing body of a county or a municipality that has a population equal to or greater than 5,000 persons must appoint seven-member code enforcement boards. The local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

(2) Members of the enforcement boards shall be residents of the municipality, in the case of municipal enforcement boards, or residents of the county, in the case of county enforcement boards. Appointments shall be made in accordance with applicable law and ordinances on the basis of experience or interest in the subject matter jurisdiction of the respective code enforcement board, in the sole discretion of the local governing body. The membership of each enforcement board shall, whenever possible, include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.

(3)(a) The initial appointments to a seven-member code enforcement board shall be as follows:

1. Two members appointed for a term of 1 year each.
2. Three members appointed for a term of 2 years each.
3. Two members appointed for a term of 3 years each.

(b) The initial appointments to a five-member code enforcement board shall be as follows:

1. One member appointed for a term of 1 year.
2. Two members appointed for a term of 2 years each.
3. Two members appointed for a term of 3 years each.

Thereafter, any appointment shall be made for a term of 3 years.

(c) The local governing body of a county or a municipality that has a population of less than 5,000 persons may reduce a seven-member code enforcement board to five members upon the simultaneous expiration of the terms of office of two members of the board.

(d) A member may be reappointed upon approval of the local governing body.

(e) An appointment to fill any vacancy on an enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chair, the enforcement board shall declare the member's office vacant, and the local governing body shall promptly fill such vacancy.

(f) The members shall serve in accordance with ordinances of the local governing body and may be suspended and removed for cause as provided in such ordinances for removal of members of boards.

(4) The members of an enforcement board shall elect a chair, who shall be a voting member, from among the members of the board. The presence of four or more members shall constitute a quorum of any seven-member enforcement board, and the presence of three or more members shall constitute a quorum of any five-member enforcement board. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as are otherwise provided by law.

(5) The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board, but in no case shall the local governing body attorney serve in both capacities.

History.—s. 1, ch. 80-300; s. 5, ch. 82-37; s. 4, ch. 86-201; s. 2, ch. 87-129; s. 4, ch. 89-268; s. 1, ch. 94-291; s. 1441, ch. 95-147.

Note.—Former s. 166.055.

162.06 Enforcement procedure.—

(1) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.

(2) Except as provided in subsections (3) and (4), if a violation of the codes is found, the code inspector shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify an enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in s. 162.12 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in s. 162.12. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(3) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify an enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to s. 162.12. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state. If the repeat violation has been corrected, the code enforcement board retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the code enforcement board.

(4) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing.

(5) If the owner of property that is subject to an enforcement proceeding before an enforcement board, special magistrate, or court transfers ownership of such property between the time the initial pleading was served

and the time of the hearing, such owner shall:

- (a) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
- (b) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.
- (c) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
- (d) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (a), (b), and (c) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

History.—s. 1, ch. 80-300; s. 5, ch. 86-201; s. 1, ch. 87-391; s. 5, ch. 89-268; s. 2, ch. 94-291; s. 1442, ch. 95-147; s. 2, ch. 96-385; s. 4, ch. 99-360; s. 64, ch. 2004-11.

Note.—Former s. 166.056.

162.07 Conduct of hearing.—

- (1) Upon request of the code inspector, or at such other times as may be necessary, the chair of an enforcement board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board. Minutes shall be kept of all hearings by each enforcement board, and all hearings and proceedings shall be open to the public. The local governing body shall provide clerical and administrative personnel as may be reasonably required by each enforcement board for the proper performance of its duties.
- (2) Each case before an enforcement board shall be presented by the local governing body attorney or by a member of the administrative staff of the local governing body. If the local governing body prevails in prosecuting a case before the enforcement board, it shall be entitled to recover all costs incurred in prosecuting the case before the board and such costs may be included in the lien authorized under s. 162.09(3).
- (3) An enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- (4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those members present and voting, except that at least four members of a seven-member enforcement board, or three members of a five-member enforcement board, must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in s. 162.09(1), the cost of repairs may be included along with the fine if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the enforcement board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

History.—s. 1, ch. 80-300; s. 6, ch. 82-37; s. 44, ch. 83-217; s. 6, ch. 86-201; s. 6, ch. 89-268; s. 3, ch. 94-291; s. 1443, ch. 95-147; s. 2, ch. 95-297.

Note.—Former s. 166.057.

162.08 Powers of enforcement boards.—Each enforcement board shall have the power to:

- (1) Adopt rules for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.
- (3) Subpoena evidence to its hearings.
- (4) Take testimony under oath.
- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

History.—s. 1, ch. 80-300; s. 7, ch. 82-37; s. 7, ch. 86-201; s. 7, ch. 89-268.

Note.—Former s. 166.058.

162.09 Administrative fines; costs of repair; liens.—

(1) An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in s. 162.06(4), the enforcement board shall notify the local governing body, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in paragraph (2)(a).

(2)(a) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.

(b) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation; and
3. Any previous violations committed by the violator.

(c) An enforcement board may reduce a fine imposed pursuant to this section.

(d) A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance imposing such fines shall include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines, including, but not limited to, those factors set forth in paragraph (b).

(3) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for

enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under s. 4(a), Art. X of the State Constitution.

History.—s. 1, ch. 80-300; s. 8, ch. 82-37; s. 2, ch. 85-150; s. 8, ch. 86-201; s. 2, ch. 87-391; s. 8, ch. 89-268; s. 4, ch. 94-291; s. 1, ch. 95-297; s. 5, ch. 99-360; s. 1, ch. 2000-125; s. 65, ch. 2004-11.

Note.—Former s. 166.059.

162.10 Duration of lien.—No lien provided under the Local Government Code Enforcement Boards Act shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to s. 162.09(3) in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The local governing body shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

History.—s. 9, ch. 82-37; s. 9, ch. 86-201; s. 9, ch. 89-268; s. 5, ch. 94-291; s. 2, ch. 2000-125.

162.11 Appeals.—An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board. An appeal shall be filed within 30 days of the execution of the order to be appealed.

History.—s. 1, ch. 80-300; s. 10, ch. 82-37; s. 3, ch. 85-150; s. 10, ch. 86-201.

Note.—Former s. 166.061.

162.12 Notices.—

(1) All notices required by this part must be provided to the alleged violator by:

(a) Certified mail, and at the option of the local government return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of

which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office, and in the case of counties, at the front door of the courthouse or the main county governmental center in said county.

2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1).

(3) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

History.—s. 1, ch. 80-300; s. 11, ch. 86-201; s. 3, ch. 87-391; s. 10, ch. 89-268; s. 6, ch. 94-291; s. 6, ch. 99-360; s. 3, ch. 2000-125; s. 1, ch. 2012-13; s. 2, ch. 2013-193; s. 1, ch. 2014-154.

Note.—Former s. 166.062.

162.125 Actions for money judgments under this chapter; limitation.—Actions for money judgments under this chapter may be pursued only on fines levied after October 1, 2000.

History.—s. 4, ch. 2000-125.

162.13 Provisions of act supplemental.—It is the legislative intent of ss. 162.01-162.12 to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in ss. 162.01-162.12 shall prohibit a local governing body from enforcing its codes by any other means.

History.—s. 11, ch. 82-37.

PART II SUPPLEMENTAL COUNTY OR MUNICIPAL CODE OR ORDINANCE ENFORCEMENT PROCEDURES

162.21 Enforcement of county or municipal codes or ordinances; penalties.

162.22 Designation of enforcement methods and penalties for violation of municipal ordinances.

162.23 Notice to appear.

162.30 Civil actions to enforce county and municipal ordinances.

162.21 Enforcement of county or municipal codes or ordinances; penalties.—

(1) As used in this section, “code enforcement officer” means any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.

(2) A county or a municipality may designate certain of its employees or agents as code enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Employees or agents who may be designated as code enforcement officers may include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or firesafety inspectors. Designation as a code enforcement officer does not provide the code enforcement officer with the power of arrest or subject the code enforcement officer to the provisions of ss. 943.085-943.255. Nothing in this section amends, alters, or contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

(3)(a) A code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court will hear the charge.

(b) Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, a code

enforcement officer may issue a citation to the person who has committed the violation. A code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(c) A citation issued by a code enforcement officer shall be in a form prescribed by the county or the municipality and shall contain:

1. The date and time of issuance.
2. The name and address of the person to whom the citation is issued.
3. The date and time the civil infraction was committed.
4. The facts constituting reasonable cause.
5. The number or section of the code or ordinance violated.
6. The name and authority of the code enforcement officer.
7. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
8. The applicable civil penalty if the person elects to contest the citation.
9. The applicable civil penalty if the person elects not to contest the citation.
10. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived his or her right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

(4) After issuing a citation to an alleged violator, a code enforcement officer shall deposit the original citation and one copy of the citation with the county court.

(5) A county or a municipality is authorized to enforce codes and ordinances under the provisions of this section and may enact an ordinance establishing procedures for the implementation of such provisions, including a schedule of violations and penalties to be assessed by code enforcement officers. If a county or municipality chooses to enforce codes or ordinances under the provisions of this section, each code or ordinance or the ordinance enacted by the county or municipality establishing procedures for implementation of this section shall provide:

- (a) That a violation of a code or an ordinance is a civil infraction.
- (b) A maximum civil penalty not to exceed \$500.
- (c) A civil penalty of less than the maximum civil penalty if the person who has committed the civil infraction does not contest the citation.
- (d) For the issuance of a citation by a code enforcement officer who has reasonable cause to believe that a person has committed an act in violation of a code or an ordinance.
- (e) For the contesting of a citation in county court.
- (f) Such procedures and provisions as are necessary to provide for the enforcement of a code or an ordinance under the provisions of this section.

(6) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) The provisions of this part shall not apply to the enforcement pursuant to ss. 553.79 and 553.80 of the Florida Building Code adopted pursuant to s. 553.73 as applied to construction, provided that a building permit is either not required or has been issued by the county or the municipality.

(8) The provisions of this section are additional and supplemental means of enforcing county or municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Nothing contained in this section shall prohibit a county or municipality from enforcing its codes or ordinances by any other means.

History.—s. 11, ch. 89-268; s. 7, ch. 94-291; s. 1444, ch. 95-147; s. 3, ch. 96-385; s. 4, ch. 98-287; s. 115, ch. 2000-141; s. 35, ch. 2001-186; s. 4, ch. 2001-372.

162.22 Designation of enforcement methods and penalties for violation of municipal ordinances.—The governing body of a municipality may designate the enforcement methods and penalties to be imposed for the violation of ordinances adopted by the municipality. These enforcement methods may include, but are not limited to, the issuance of a citation, a summons, or a notice to appear in county court or arrest for violation of municipal ordinances as provided for in chapter 901. Unless otherwise specifically authorized and provided for by law, a person convicted of violating a municipal ordinance may be sentenced to pay a fine, not to exceed \$500, and may be sentenced to a definite term of imprisonment, not to exceed 60 days, in a municipal detention facility or other facility as authorized by law.

History.—s. 1, ch. 94-255.

162.23 Notice to appear.—

(1) Notwithstanding s. 34.07, a code enforcement officer, designated pursuant to s. 162.21(1) and (2), may issue a notice to appear at any hearing conducted by a county court if the officer, based upon personal investigation, has reasonable cause to believe that the person has violated a code or ordinance. A notice to appear means a written order issued by a code enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time. If a person issued a notice to appear under this section refuses to sign such notice, the code enforcement officer has no authority to arrest such person.

(2) Prior to issuing a notice to appear, a code enforcement officer shall provide written notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no fewer than 5 days and no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the prescribed time period, a code enforcement officer may issue a notice to appear to the person who has committed the violation. A code enforcement officer is not required to provide the person with a reasonable time period to correct the violation prior to issuing a notice to appear and may immediately issue a notice to appear if a repeat violation is found, or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare or that the violator is engaged in violations of an itinerant or transient nature, as defined by local code or ordinance within the jurisdiction, or if the violation is irreparable or irreversible.

History.—s. 1, ch. 96-385; s. 7, ch. 99-360.

162.30 Civil actions to enforce county and municipal ordinances.—In addition to other provisions of law authorizing the enforcement of county and municipal codes and ordinances, a county or municipality may enforce any violation of a county or municipal code or ordinance by filing a civil action in the same manner as instituting a civil action. The action shall be brought in county or circuit court, whichever is appropriate depending upon the relief sought. Counties and municipalities are authorized and required to pay any counsel appointed by the court to represent a private party in such action if the provision of counsel at public expense is required by the Constitution of the United States or the Constitution of the State of Florida and if the party is indigent as established pursuant to s. 27.52. The county or municipality shall bear all court fees and costs of any such action, and may, if it prevails, recover the court fees and costs and expense of the court-appointed counsel as part of its judgment. The state shall bear no expense of actions brought under this section except those that it would bear in an ordinary civil action between private parties in county court.

History.—s. 87, ch. 2003-402.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 11.b
Meeting Date: March 15, 2021

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Home Business Tax Receipt (BTR) Compliance for Discussion (White & Scardino)

BACKGROUND/HISTORY:

As discussed at the March 1, 2021 meeting under Council reports, the topic of enforcement of the "do's and don'ts" of the Home BTR was discussed by Council.

Staff is currently working on four separate home business applications that appear to not comply with the application requirements. Staff would like updated direction from Council on the requirements, expectations, and desired outcomes for issuing Home BTRs.

As previously forwarded to Malabar Council, a bill progressing through the Florida Legislature is that would preempt municipalities from any regulations on home businesses.

Staff benefits greatly from the resources the Florida League of Cities in their in person and hands on involvement with the State Legislature. They have persons specializing in each of several specific areas, finance, land use, economic development, home rule, etc. that monitor and report on these issues and notify all 67 counties and 412 municipalities in advance of critical votes.

As representatives of citizens in Malabar, but also with the duty to financially and responsibly protect the character of the Town, Malabar Council does have the authority to direct staff to draft resolutions to either support or oppose legislation proceeding through the State legislature.

ATTACHMENTS:

Home BTR application
Current Legislation under Consideration in Tallahassee

ACTION OPTIONS:

Direction from Council



MALABAR HOME BUSINESS TAX RECEIPT APPLICATION

Office of the Town Clerk
(321) 727-7764 x 12

2725 Malabar Road
Malabar, FL 32950-4427

DATE RECEIVED _____ CLERK _____
(Applicant to complete this section – Please type or print legibly)

APPLICANT'S NAME _____
SOCIAL SECURITY NUMBER _____ OR
FED. EMPLOYER ID. NUMBER _____

BUSINESS OWNER'S NAME _____ TELEPHONE _____
(If different than applicant)

HOME ADDRESS _____
(No. & Street) (P.O. Box)

(City) (State) (Zip)

BUSINESS NAME _____ TELEPHONE _____

MAILING ADDRESS _____
(No. & Street) (City) (State) (Zip)

TYPE OF BUSINESS APPLYING FOR (PROVIDE A BRIEF DESCRIPTION OF BUSINESS ACTIVITY)

Hours of Operation: _____

APPLICANT'S SIGNATURE _____ DATE _____

Do Not Write Below This Line

BUILDING OFFICIAL: THIS APPLICATION IS IS NOT IN COMPLIANCE WITH ORDINANCE #87-5
SPECIAL LIMITATIONS / RESTRICTIONS ASSIGNED BY THE TOWN OF MALABAR:

BUILDING DEPT. APPROVAL YES NO SIGNATURE _____ DATE _____
OCCUPATIONAL CLASS NO. _____ FEE \$50.00 BTR NO. ASSIGNED: _____
DATE APPLICANT CONTACTED _____ DATE LIC ISSUED _____ CASH CHECK # _____

TOWN OF MALABAR
HOME BUSINESS TAX CERTIFICATE LICENSE – PART II
REQUIREMENTS FOR HOME OCCUPATIONS – ORDINANCE 90-5, SECTION 1-5.25

APPLICANT: PLEASE READ ALL REQUIREMENTS. THEN INITIAL EACH LINE NEXT TO ITEMS 1 THROUGH 13 AND SIGN AT BOTOM ON REVERSE SIDE AS APPLICANT. RETURN THE SIGNED COPY WITH YOUR APPLICATION AND REQUIRED ATTACHMENTS. KEEP THE OTHER COPY FOR YOUR REFERENCE.

The following requirements **MUST BE MET IN FULL**:

Section 1-5.25. Home occupations:

Within the RR-65, RS-21, RS-15, RS-10, RM-4, RM-6, and R-MH districts, a home occupation shall be regulated through the issuance of a home occupation permit. A home occupation shall be subject to all applicable Town occupational licenses and other business taxes. Each applicant shall submit to the Town Clerk a sworn application on a standard form furnished by the Town Clerk with a fee determined by resolution of the Town Council. The applicant shall also submit with the application a recent photograph of the residence showing the entire front yard and all driveways and carports, if any. The application form shall include but not be limited to the following information:

- Name of applicant;
- Location of residence wherein the home occupation, if approved, will be conducted;
- Total floor area of the first floor of the residence;
- Area of room or rooms to be utilized in the conduct of the home occupation;
- A sketch showing the floor plan and the area thereof to be utilized for the conduct of the home occupation;
- The nature of the home occupation sought to be approved;
- The days and hour of operation;
- A recent photo of the dwelling showing the entire front yard, all driveways and carports.

If the information contained therein is in compliance with the provisions or the intent of this Section, the Town may, in its direction [discretion], issue a permit for such home occupation. Any home occupation permit may be revoked by the Council at any time it has been determined that the home occupation has become a public nuisance or no longer is in compliance with this Section.

All home occupations shall comply with the following regulations:

- _____ 1. Place of Operation and Participants: A home occupation shall be carried on entirely within a dwelling. Only members of the family permanently living therein shall participate in the home occupation.
- _____ 2. No Product to be Offered for Sale. No commodities or products shall be offered for sale from the premises.
- _____ 3. Restriction on Commercial Vehicles. No more than one commercial vehicle, having a maximum weight of one ton may be kept on the premises or parked overnight on the premises.
- _____ 4. Restriction on Use. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and shall under no circumstances change the residential character thereon.
- _____ 5. Appearance of Structure and Signage. Within a rural residential or residential zoning district, there shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation and there shall be no signage, other than signage required by Florida Statute. There shall be no display that will indicate from the exterior that the building is being utilized in part for any purpose other than that of a dwelling.
- _____ 6. No Home Occupation Activity Within Accessory Building. No home occupation shall be conducted in any accessory building.

_____ 7. Restriction on Home Occupation Square Footage. No home occupation shall occupy more than twenty-five (25) percent of the first floor area of the residence, exclusive of the area of any open porch or attached garage or similar space not suited or intended for occupancy as living quarters. No duly permitted residential structural additions to the dwelling nor any attached enclosed residential conversions shall be considered as floor area until two (2) years after the completion date thereof.

_____ 8. Traffic Generation and Off-Street Parking. No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood. Parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.

_____ 9. Use of Equipment, Including Power Motors. No motor power other than electric motors shall be used in conjunction with such home occupations. The total horsepower of such motors shall not exceed three (3) horsepower, or one (1) horsepower for any single motor.

_____ 10. Nuisance Impacts Regulated. In addition, no equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuation in line voltage off the premises.

_____ 11. Restriction on Number of Customers Served At Any One Time. Services shall be performed for no more than four (4) persons on the premises at any one time.

_____ 12. Prohibited Uses. Occupations which generate greater volumes of traffic than would normally be generated in a residential district are prohibited. The following shall not be interpreted to be home occupations:

- Beauty shops and barber shops
- Public dining or tea room facilities
- Child care facilities accommodating five (5) or more children
- Funeral homes
- Gift shops
- Massage parlors
- Nursing homes, group homes and adult congregate living facilities
- Medical laboratories
- Outdoor repair or storage
- Rental of any equipment or items
- Veterinary hospitals
- Similar uses not strictly in compliance with the provisions of this section
- Any commercial, industrial, or commercial agricultural use as defined in Section 1-2.6, excepting specific office activities duly approved by the Town Council.

_____ 13. Failure to continuously comply with all provisions of this subsection shall be grounds for revocation of the home occupation permit by the Town Council.

I hereby swear that the foregoing information given is true and that I have read and understand the requirements of Ordinance 9-5, Section 1-5.25

Signature of Applicant

Date

Clerk or Designee

Date

Senate Bill 266

In 2021 Legislature

Preempts to the State regulations on
Home based Businesses

By Senator Perry

8-00638-21

2021266__

1 A bill to be entitled
2 An act relating to home-based businesses; creating s.
3 559.955, F.S.; providing legislative findings and
4 intent; specifying conditions under which a business
5 is considered a home-based business; authorizing a
6 home-based business to operate in a residential zone
7 under certain circumstances; preempting to the state
8 the ability to regulate or license home-based
9 businesses; prohibiting a local government from
10 certain actions relating to the licensure and
11 regulation of home-based businesses; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Section 559.955, Florida Statutes, is created to
17 read:

18 559.955 Home-based businesses; legislative findings and
19 intent; preemption.—

20 (1) It is the intent of the Legislature to encourage small
21 and home-based business enterprises. To that end, the
22 Legislature finds that:

23 (a) Small and home-based businesses are a critical part of
24 the economy of this state and provide unique and valuable
25 benefits to the communities in which they are located.

26 (b) Residential property is often the most valuable asset
27 owned by a potential small business entrepreneur.

28 (c) Residential property can be put to beneficial use by
29 potential small business entrepreneurs in ways that are

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30 consistent with residential use.

31 (2) For purposes of this section, a business is considered
32 a home-based business if it operates, in whole or in part, from
33 a residential property and meets the following criteria:

34 (a) The employees of the home-based business reside in the
35 residential dwelling or are immediate family members of
36 residents of the dwelling, except that up to two employees are
37 not required to be related to a resident of or reside in the
38 dwelling.

39 (b) Parking related to the business activities of the home-
40 based business complies with local zoning requirements.

41 (c) The business activities of the home-based business do
42 not generate a substantial increase in any of the following:

43 1. Traffic.

44 2. Noise.

45 3. Waste or recycling.

46 (d) As viewed from the street, the use of the residential
47 property is consistent with the uses of the residential areas
48 that surround the property.

49 (e) The activities of the home-based business are secondary
50 to the property's use as a residential dwelling.

51 (3) (a) A home-based business that operates from a
52 residential property as provided in subsection (2) may operate
53 in an area zoned for residential use.

54 (b) A residential dwelling that is used as a home-based
55 business must meet the applicable standards of the Florida
56 Building Code.

57 (4) The licensure and regulation of home-based businesses
58 is preempted to the state, and local governments may not enact

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2021266__

59 or enforce any ordinance, regulation, or policy or take any
60 action to license or otherwise regulate a home-based business.

61 Section 2. This act shall take effect July 1, 2021.

House Bill 403

In 2021 Legislature

Preempts to the State regulations on
Home based Businesses

1 A bill to be entitled
 2 An act relating to home-based businesses; creating s.
 3 559.955, F.S.; specifying conditions under which a
 4 business is considered a home-based business;
 5 authorizing a home-based business to operate in a
 6 residential zone under certain circumstances;
 7 prohibiting a local government from certain actions
 8 relating to the licensure and regulation of home-based
 9 businesses; authorizing specified business owners to
 10 challenge certain local government actions;
 11 authorizing the prevailing party to recover specified
 12 attorney fees and costs; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 559.955, Florida Statutes, is created
 17 to read:

18 559.955 Home-based businesses; local government
 19 restrictions.-

20 (1) For purposes of this section, a business is considered
 21 a home-based business if it operates, in whole or in part, from
 22 a residential property and meets the following criteria:

23 (a) The employees of the home-based business who work at
 24 the residential dwelling also reside in the residential
 25 dwelling, except that up to two employees who do not reside at

26 the residential dwelling may work at the residential dwelling.
27 However, employees of the home-based business who do not
28 primarily work at the residential dwelling are not required to
29 reside in the dwelling.

30 (b) Parking related to the business activities of the
31 home-based business complies with local zoning requirements.

32 (c) As viewed from the street, the use of the residential
33 property is consistent with the uses of the residential areas
34 that surround the property. However, incidental and short-term
35 business uses and activities may be conducted at the residential
36 property.

37 (d) The activities of the home-based business are
38 secondary to the property's use as a residential dwelling.

39 (2) A home-based business that operates from a residential
40 property as provided in subsection (1):

41 (a) May operate in an area zoned for residential use.

42 (b) May not be prohibited, restricted, regulated, or
43 licensed in a manner that is different from other businesses in
44 a local government's jurisdiction.

45 (c) Is only subject to applicable business taxes under
46 chapter 205 in the county and municipality in which the home-
47 based business is located.

48 (3) Local governments may not enact or enforce any
49 ordinance, regulation, or policy, or take any action to license
50 or otherwise regulate a home-based business in violation of this

51 section.

52 (4) Any adversely affected current or prospective home-
 53 based business owner may challenge any local government action
 54 in violation of this section. The prevailing party in a
 55 challenge may recover reasonable attorney fees and costs
 56 incurred in challenging or defending the action, including
 57 reasonable appellate attorney fees and costs.

58 Section 2. This act shall take effect July 1, 2021.

HOUSE BILL 735

In 2021 Legislature

Amends F.S. 163 creating a new
F.S.163.211 preempting specialty
contractors from local BTR requirement

1 A bill to be entitled
 2 An act relating to preemption of local occupational
 3 licensing; creating s. 163.211, F.S.; providing
 4 definitions; preempting licensing of occupations to
 5 the state; providing exceptions; prohibiting local
 6 governments from imposing additional licensing
 7 requirements or modifying licensing unless specified
 8 conditions are met; specifying that certain local
 9 licensing that does not meet specified criteria does
 10 not apply and may not be enforced; amending s.
 11 489.117, F.S.; specifying that certain specialty
 12 contractors are not required to register with the
 13 Construction Industry Licensing Board; prohibiting
 14 local governments from requiring certain specialty
 15 contractors to obtain a license under specified
 16 circumstances; specifying job scopes for which a local
 17 government may not require a license; amending ss.
 18 489.1455 and 489.5335, F.S.; authorizing counties and
 19 municipalities to issue certain journeyman licenses;
 20 providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 163.211, Florida Statutes, is created
 25 to read:

26 163.211 Licensing of occupations preempted to state.-

27 (1) DEFINITIONS.-As used in this section:

28 (a) "Licensing" means any training, education, test,
 29 certification, registration, or license that is required for a
 30 person to perform an occupation in addition to any associated
 31 fee.

32 (b) "Local government" means a county, municipality,
 33 special district, or political subdivision of the state.

34 (c) "Occupation" means a paid job, profession, work, line
 35 of work, trade, employment, position, post, career, field,
 36 vocation, or craft.

37 (2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.-The
 38 licensing of occupations is expressly preempted to the state and
 39 this section supersedes any local government licensing
 40 requirement of occupations with the exception of the following:

41 (a) Any local government that imposed licenses on
 42 occupations before January 1, 2021. However, any such local
 43 government licensing of occupations expires on July 1, 2023.

44 (b) Any local government licensing of occupations
 45 authorized by general law.

46 (3) EXISTING LICENSING LIMIT.-A local government that
 47 licenses occupations and retains such licensing as set forth in
 48 paragraph (2) (a) may not impose additional licensing
 49 requirements on that occupation or modify such licensing.

50 (4) LOCAL LICENSING NOT AUTHORIZED.-Local licensing of an

51 occupation that is not authorized under this section or
 52 otherwise authorized by general law does not apply and may not
 53 be enforced.

54 Section 2. Paragraph (a) of subsection (4) of section
 55 489.117, Florida Statutes, is amended to read:

56 489.117 Registration; specialty contractors.—

57 (4) (a) A person ~~holding a local license~~ whose job scope
 58 does not substantially correspond to either the job scope of one
 59 of the contractor categories defined in s. 489.105(3) (a)-(o), or
 60 the job scope of one of the certified specialty contractor
 61 categories established by board rule, is not required to
 62 register with the board ~~to perform contracting activities within~~
 63 ~~the scope of such specialty license.~~ A local government, as
 64 defined in s. 163.211, may not require a person to obtain a
 65 license for a job scope which does not substantially correspond
 66 to the job scope of one of the contractor categories defined in
 67 s. 489.105(3) (a)-(o) and (q) or authorized in s. 489.1455(1).
 68 For purposes of this section, job scopes for which a local
 69 government may not require a license include, but are not
 70 limited to, painting; flooring; cabinetry; interior remodeling;
 71 driveway or tennis court installation; handyman services;
 72 decorative stone, tile, marble, granite, or terrazzo
 73 installation; plastering; stuccoing; caulking; and canvas awning
 74 and ornamental iron installation.

75 Section 3. Section 489.1455, Florida Statutes, is amended

76 to read:

77 489.1455 Journeyman; reciprocity; standards.—

78 (1) Counties and municipalities are authorized to issue
 79 journeyman licenses in the plumbing, pipe fitting, mechanical,
 80 or HVAC trades.

81 (2)~~(1)~~ An individual who holds a valid, active journeyman
 82 license in the plumbing, pipe fitting ~~plumbing/pipe fitting,~~
 83 mechanical, or HVAC trades issued by any county or municipality
 84 in this state may work as a journeyman in the trade in which he
 85 or she is licensed in any county or municipality of this state
 86 without taking an additional examination or paying an additional
 87 license fee, if he or she:

88 (a) Has scored at least 70 percent, or after October 1,
 89 1997, at least 75 percent, on a proctored journeyman Block and
 90 Associates examination or other proctored examination approved
 91 by the board for the trade in which he or she is licensed;

92 (b) Has completed an apprenticeship program registered
 93 with a registration agency defined in 29 C.F.R. s. 29.2 and
 94 demonstrates 4 years' verifiable practical experience in the
 95 trade for which he or she is licensed, or demonstrates 6 years'
 96 verifiable practical experience in the trade for which he or she
 97 is licensed;

98 (c) Has satisfactorily completed specialized and advanced
 99 module coursework approved by the Florida Building Commission,
 100 as part of the building code training program established in s.

101 553.841, specific to the discipline or, pursuant to
 102 authorization by the certifying authority, provides proof of
 103 completion of such coursework within 6 months after such
 104 certification; and

105 (d) Has not had a license suspended or revoked within the
 106 last 5 years.

107 ~~(3)-(2)~~ A local government may charge a registration fee
 108 for reciprocity, not to exceed \$25.

109 Section 4. Section 489.5335, Florida Statutes, is amended
 110 to read:

111 489.5335 Journeyman; reciprocity; standards.—

112 (1) Counties and municipalities are authorized to issue
 113 journeyman licenses in the electrical and alarm system trades.

114 ~~(2)-(1)~~ An individual who holds a valid, active journeyman
 115 license in the electrical or alarm system trade issued by any
 116 county or municipality in this state may work as a journeyman in
 117 the trade in which he or she is licensed in any other county or
 118 municipality of this state without taking an additional
 119 examination or paying an additional license fee, if he or she:

120 (a) Has scored at least 70 percent, or after October 1,
 121 1997, at least 75 percent, on a proctored journeyman Block and
 122 Associates examination or other proctored examination approved
 123 by the board for the ~~electrical~~ trade in which he or she is
 124 licensed;

125 (b) Has completed an apprenticeship program registered

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126 with a registration agency defined in 29 C.F.R. s. 29.2 and
127 demonstrates 4 years' verifiable practical experience in the
128 ~~electrical~~ trade for which he or she is licensed, or
129 demonstrates 6 years' verifiable practical experience in the
130 ~~electrical~~ trade for which he or she is licensed;

131 (c) Has satisfactorily completed specialized and advanced
132 module coursework approved by the Florida Building Commission,
133 as part of the building code training program established in s.
134 553.841, specific to the discipline, or, pursuant to
135 authorization by the certifying authority, provides proof of
136 completion of such curriculum or coursework within 6 months
137 after such certification; and

138 (d) Has not had a license suspended or revoked within the
139 last 5 years.

140 ~~(3)(2)~~ A local government may charge a registration fee
141 for reciprocity, not to exceed \$25.

142 Section 5. This act shall take effect July 1, 2021.

SENATE BILL 1294

In 2021 Legislature

Preempts to the State regulations on
Food Cottage Operations

By Senator Brodeur

9-01409-21

20211294__

1 A bill to be entitled

2 An act relating to cottage food operations; providing
3 a short title; amending s. 500.03, F.S.; revising the
4 definition of "cottage food operation"; amending s.
5 500.80, F.S.; increasing the annual gross sales
6 limitation for exempting cottage food operations from
7 certain food and building permitting requirements;
8 authorizing the sale, offer for sale, acceptance of
9 payment, and delivery of cottage food products by
10 mail; preempting the regulation of cottage food
11 operations to the state; prohibiting local governments
12 from prohibiting or regulating cottage food
13 operations; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. This act may be cited as the "Home Sweet Home
18 Act."

19 Section 2. Paragraph (j) of subsection (1) of section
20 500.03, Florida Statutes, is amended to read:

21 500.03 Definitions; construction; applicability.—

22 (1) For the purpose of this chapter, the term:

23 (j) "Cottage food operation" means a natural person or an
24 entity that ~~who~~ produces or packages cottage food products at
25 the his- or her residence of the natural person or at the
26 residence of a natural person who has an ownership interest in
27 the entity, and sells such products in accordance with s.
28 500.80.

29 Section 3. Paragraph (a) of subsection (1) and subsections

9-01409-21

20211294

30 (2) and (6) of section 500.80, Florida Statutes, are amended to
31 read:

32 500.80 Cottage food operations.-

33 (1) (a) A cottage food operation must comply with the
34 applicable requirements of this chapter but is exempt from the
35 permitting requirements of s. 500.12 if the cottage food
36 operation complies with this section and has annual gross sales
37 of cottage food products that do not exceed \$250,000 ~~\$50,000~~.

38 (2) A cottage food operation may sell, offer for sale, and
39 accept payment for cottage food products over the Internet or by
40 mail order. ~~Such, but such~~ products may ~~must~~ be delivered in
41 person directly to the consumer, ~~or~~ to a specific event venue,
42 or by mail. A cottage food operation may not sell, offer for
43 sale, or deliver cottage food products ~~by mail order or~~ at
44 wholesale.

45 (6) The regulation of cottage food operations is preempted
46 to the state. A local law, ordinance, or regulation may not
47 prohibit a cottage food operation or regulate ~~must comply with~~
48 ~~all applicable county and municipal laws and ordinances~~
49 ~~regulating~~ the preparation, processing, storage, and sale of
50 cottage food products by a cottage food operation or from a
51 person's residence.

52 Section 4. This act shall take effect July 1, 2021.

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 11.c
Meeting Date: March 15, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Land Development Tree Preservation Discussion (Scardino)

BACKGROUND/HISTORY:

As discussed at the March 1, 2021 meeting under council reports, the topic of trees during land development activities was asked to be brought forth for council discussion by Councilmember Scardino. Included for Town Council's discussion is the Town of Malabar's Code of Ordinances related to Site Plan Review, Landscape Regulations, and Tree Protection and Restoration with a pertinent summary of each code section.

Article VII - SITE PLAN REVIEW

Any development including single family residences which will involve any clearing, grading or other form of disturbing the land by the movement of earth or fill, excavation, tree removal resulting in one thousand (1,000) square feet of impervious surface area on the entire site.

In all cases requiring site plan review, no structure or parking area, or part thereof, shall be erected or used, or land or water used, or any change of use consummated, nor shall any building permit be issued therefor, unless a site plan for such structure or use shall have been reviewed by the Town Planning and Zoning Board. The application shall be forwarded to the Building Official or Town Engineer and such other staff as may be pertinent for review and comments returned to the applicant. After reviewing a site plan and staff recommendations, the Planning and Zoning Board shall recommend approval or disapproval, with the written record shall be forwarded to the Town Council for final action. Town staff and its authorized designees enforce the approved site plan through routine inspection processes throughout the land development and construction phases.

Article XIV - LANDSCAPE REGULATIONS

The intent of these landscape regulations shall be to require screening and beautification of all storage, parking, display or sales areas so as to improve, protect and preserve the Town's unique aesthetic characteristics and qualities. These regulations define landscape strip or perimeter landscaping defining ground removal diameters, encroachment drip lines, and a protective barrier detail for street frontage, interior of off street parking, and non-vehicular use areas, specifications of living plant materials, and interior landscape requirements providing for species, maintenance, irrigation and a variance process.

Article XV - TREE PROTECTION AND RESTORATION

It is the intent of this ordinance to promote the health, safety and general welfare of the current and future residents of the Town of Malabar by establishing minimum standards for the regulation of the planting, maintenance, preservation, protection and removal of trees within the Town of Malabar. It is further intended to perpetuate adequate tree numbers and canopy in order to maintain the economic, environmental and aesthetic status of the Town. To this end, it shall be unlawful to cut down, damage, poison or in any other manner destroy or cause to be destroyed any tree, mangrove, or other vegetation.

A beautification trust fund is hereby established for the purpose of accruing revenues generated by the receipt of monies collected as application fees and the equivalent values as prescribed herein, and for the expenditure of such funds for the purpose of establishing beautification projects on public lands. All projects will be approved by the Town Council.

The ordinance provides for a permit application and plan submission to preserve or mitigate monetarily by identifying tree specimens and specifications prior to the removal, relocation, destruction, or damage to trees during land development or land clearing activities. Type 1, Type II, Types III, and Type IV permits are available for submission by an applicant.

ATTACHMENTS:

Malabar, FL Code of Ordinances - LDC Article VII Site Plan Review.PDF
Malabar, FL Code of Ordinances - LDC Article XIV Landscape Regulations.PDF
Malabar, FL Code of Ordinances - LDC Article XV Tree Protection.PDF

ACTION OPTIONS:

As directed by council discussion.

Malabar Land Development Code

Article VII

Site Plan

Article VII - SITE PLAN REVIEW

Section 1-7.1. - Applicability and filing procedure.

Site plan approval, as provided for herein shall be required for each of the following:

1. All permitted uses, except single family homes or single family home accessory structures. However, all uses and structures shall comply with surfacewater management criteria of Article VIII.
2. All conditional uses.
3. Any use or change in use resulting in one thousand (1,000) square feet of impervious surface area on the entire site.
4. The provisions of Article VIII: Surface Water Management shall apply to all site plans as if the same were incorporated in this Article.
5. Any development including single family residences which will involve any clearing, grading or other form of disturbing the land by the movement of earth provided that any one of the following descriptions applies to said movement.
 - (a) Excavation, fill or any combination thereof which will exceed five hundred (500) cubic yards.
 - (b) Fill which will exceed three (3) feet in vertical depth at its deepest point as measured from the natural ground surface.
 - (c) Excavation which will exceed four (4) feet in vertical depth at its deepest point as measured from the natural ground surface.
 - (d) Excavation, fill or any combination thereof which will exceed an area of one thousand (1,000) square feet.
 - (e) Plant and/or tree cover is to be removed from an area exceeding one thousand (1,000) square feet on any parcel of land.
 - (f) Whenever any amount of excavation or fill is proposed within one hundred (100) feet of a stream, stream channel or body of water a soil erosion and sedimentation control plan shall be provided.

A. *General Site Plan Review Procedure.* In all cases requiring site plan review, no structure or parking area, or part thereof, shall be erected or used, or land or water used, or any change of use consummated, nor shall any building permit be issued therefor, unless a site plan for such structure or use shall have been reviewed by the Town Planning and Zoning Board.

1. *Filing.* Before such site plan shall be approved, an application for such approval shall be filed with the Town Clerk then directed to the Building Official and/or the Town Engineer or other designated officials for their recommendation. Town Engineer is defined as that Town employee, or outside Florida registered engineer contracted by the Town, responsible for performing the duties specified herein as the Town Engineer.
2. *Application, Fee and Disclosure of Ownership.* Such application shall be in a form substantially in accordance with the form prescribed by the Town Clerk, copies of which may be obtained from the Town Clerk's office. A written power of attorney authorizing a person other than the owner(s) to sign such application must be attached to said application.

All applications shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for site plan approval is sought, except publicly held corporations, in which case the name and address of the corporation and principal executive officers will be sufficient.

The fee schedule for site plan review shall be as determined by resolution of the Town Council.

3. *Review by Town Staff and Planning and Zoning Board.* The application shall be forwarded to the Building Official or Town Engineer and such other staff as may be pertinent. The Town shall proceed to make appropriate studies and/or reviews required to make an appropriate evaluation. The application with evaluative comment shall then be forwarded to the Town Planning and Zoning Board for their consideration and action. The site plan review process shall be carried out in accordance with procedures established by the Planning and Zoning Board, so as to prevent inconvenience and delay to the project.

After reviewing a site plan and staff recommendations, the Planning and Zoning Board shall recommend approval or disapproval. The Planning and Zoning Board shall provide written comments documenting any conditions of approval. If site plan is recommended for disapproval, the Planning and Zoning Board shall specify in writing the reasons for recommending denial. All recommendations of the Planning Board together with the written record shall be forwarded to the Town Council for final action.

4. *Action by the Town Council.* The Town Council shall consider the recommendations of staff and the Planning and Zoning Board and approve with or without conditions, or disapprove the site plan. The Town Council may attach to its approval of a site plan any reasonable conditions, limitations or requirements which are found necessary, in its judgement, to effectuate the purpose of this Section and carry out the spirit and purpose of the Zoning Ordinance.

Any condition shall be made a written record and affixed to the site plan as approved. If the Town Council disapproves a site plan, the reasons shall be stated in writing and the appeal shall be to the Court of appropriate jurisdiction.

B. *Review of Minor Site Plans.*

1. *Applicability.* For the purposes of this section, minor site plans shall include the following:
 - a. Residential projects comprised of a single building, having less than five (5) dwelling units, or;
 - b. Projects containing less than one thousand (1,000) square feet of new impervious surface area.
 - c. Single family homes and accessory buildings or ponds which require site plan approval pursuant to section 1-7.1.5.
2. *Submission Requirements for Minor Site Plans.* Minor site plans shall only include that information required in Sections 1-7.2, 1-7.3, which is determined to be applicable to the proposed minor site plan by the Building Official and Town Engineer.
3. *Minor Site Plan Review Procedures.* All minor site plan applications shall be reviewed by the Town Engineer and Building Official and approved by the Building Official, the Planning and Zoning Board and the Chairperson of the Town Council. However, single family homes, accessory buildings or ponds may be approved by the Building Official. Appeals of such decisions shall be conducted pursuant to section 1-7.4

C. *Minor Modifications of Site Plans.* Minor modifications to approved site plans shall include changes such as the:

1. Addition of awnings, canopies or other ornamental structures; redesign and different location of pools, parking spaces, drives and driveways; or modifications in stairs or elevations of decks, porches, terraces and fencing;
2. Addition of parking spaces not to exceed twenty-five (25) percent, including fractions thereof, of the total number of existing parking spaces or five (5) spaces, whichever is the greater amount;
3. Attached or detached additions to buildings which do not increase the floor area in excess of five hundred (500) square feet;

4. Installation of utility system improvements including buildings not exceeding two hundred (200) square feet.
5. Aside from minor modifications to site plans as herein defined, any change in use of buildings, structures, land or water, or institutions of new uses, or alteration or major improvements to existing structures, or erection of new buildings or structures shall require a new site plan submittal in accordance with all procedures and provisions of this Code.

Such changes to approved site plans shall be reviewed by the Building Official and or other designated Town consultants/Staff. If the Building Official and Town Engineer have no objection to the request based on its compliance with the Code, such minor modifications shall be submitted for approval by the Town Council Chairperson after review by the Planning and Zoning Board. The Town Council Chairperson shall report each change so approved to the Town Council for the record at the next scheduled meeting.

- D. *Conformance with Zoning Regulations Required.* Any such building, structure or use shall be erected, altered, installed and maintained in full conformity with the provisions of the zoning ordinance and the approved site plan.

(Ord. No. 91-1, 3-19-91)

Section 1-7.2. - Considerations in reviewing site plans.

The Planning and Zoning Board shall not approve a site plan unless a finding is made that such site plan conforms to all applicable provisions of the land development regulations.

- A. *Site Location and Character of Use.* The Comprehensive Plan together with the land development regulations, including size and dimension regulations, general provisions, performance standards, and the list of permitted and conditional uses, off-street parking, landscaping, required open spaces, yards and building setbacks shall collectively be the principal guides in determining the suitability of the location of the proposed use.
- B. *Appearance of Site and Structures.* The appearance of site and structures shall be coordinated for the purpose of creating a pleasing and harmonious overall environment. The choice of building materials, plant materials, lighting and other building and site improvements shall be commensurate with the objectives of the subject use without generating adverse visual impact on surrounding properties or transportation corridors. Architectural style or design is not restricted. Evaluation of the appearance of a project shall be based on the quality of its overall design and relationship to the impacted area considering the following factors:
 1. *Harmonious Overall Design.* The exterior of buildings and structures including mass, facade and materials shall be in harmony with the site and the general character of the impacted area and shall not be gaudy or garish. Awnings or ornamental features shall be designed in a manner harmonious with the building design and shall be of appropriate scale, shape, and pattern in order to reinforce good design principles. Similarly, awnings or ornamental features shall not use incompatible or extraordinary scale, shapes, color schemes, patterns or other extraordinary features for purposes of attracting attention. The appearance of buildings and structures shall be disapproved under Section 1-7.2(B) in extreme cases only and reasonable doubt shall be resolved in favor of the applicant.
 2. *Location and Screening of Mechanical Equipment, Utility Hardware and Waste Storage Areas.* Mechanical equipment or other utility hardware other than antennas and stacks on roofs shall be harmonious with the building or they shall be located and/or screened so as not to be visible from any public ways within the impacted area. Similarly, refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or hedges. In cases where dumpsters must be located in areas highly visible from any public right-of-way, the Town Planning and Zoning Board shall be authorized to require appropriate vegetative or structural screening to shield an unsightly condition.

3. *Commercial and Industrial Activities Conducted in Enclosed Buildings.* All businesses, services or manufacturing or processing shall be conducted within completely enclosed buildings. If the Town Council determines that a demonstrated necessity exists for outside storage or display due to the impracticality and unreasonableness of enclosure of such services, storage and display areas, in such case such service, storage and display areas or yards shall be screened by a continuous fence or wall or by landscaping and berm system so as to provide a ninety (90) percent opaque screen with a minimum height of five (5) to eight (8) feet, unless the same is demonstrated by the applicant to the Town Council's satisfaction to be impractical and unreasonable.
 4. *Exterior Lighting.* Exterior lighting shall be provided and shall be so arranged as to shield or deflect the light from adjoining properties and public streets.
- C. *Access, Internal Circulation, Off-Street Parking and Other Traffic Impacts.* The Town Building Official and/or designated staff shall advise on matters related to this subsection 1-7.2(C):
1. *Internal Circulation System Design and Access/Egress Considerations.* Driveways, curb cuts, and areas for the parking and internal circulation of vehicles shall be located, designed and controlled so as to provide for safe and convenient circulation within the site and safe and convenient access from and onto adjoining streets. The Town Staff shall review such design considerations based on standard traffic engineering principals and practices and such specifications as may be adopted by resolution of the Town Council. Requirements of Article IX of this Chapter [Code] shall be applied for off-street parking. Among factors to be considered shall be need for acceleration and deceleration lanes; the number, location and size of curb cuts and access drives from adjacent streets; the location and design of driveways and access aisles to parking spaces, the arrangement, delineation and marking for parked areas; and the means of access to buildings for fire-fighting apparatus and other emergency vehicles.
 2. *Separation of Vehicular and Pedestrian Areas.* Parking areas and driveways shall be clearly identified and separated from principal pedestrian routes and recreation areas by curbs, pavement markings, planting areas, fences or similar features designed to promote pedestrian safety.
- D. *Traffic Impacts.* A traffic impact analysis shall be required for site plan reviews pursuant to standards, procedures and criteria defined herein. The traffic impact analysis is designed to achieve objectives stipulated in the transportation element of the Comprehensive Plan.
1. *Applicability.* A transportation impact study shall be required if:
 - (a) A proposed development generates more than one thousand (1,000) trips per day. Such development shall maintain a level of service C, daily condition and level of service D for peak hour conditions on collector and arterial street segments as noted below. The trip generation shall be based on the Institute of Transportation Engineers, Trip Generation Manual (1988) unless the applicant can demonstrate that unique development characteristics will result in substantially different rates.
 2. *Impact Study Areas.* The transportation impact study area shall include all arterial and collector streets within one half ($\frac{1}{2}$) mile of the site entrance and/or shall include the nearest arterial roads that will be impacted by the development. For developments which generate between five hundred (500) and one thousand (1,000) trips during the peak hour or over one thousand (1,000) trips during the peak hour, the study area shall be one (1) and three (3) miles respectively. Estimates of peak hour trip generation shall be determined by the applicant's Florida Registered Traffic Engineer and shall be approved by the Town Engineer. Peak hour traffic impact shall be assessed, with and without the development, for all collector and arterial road segments and their respective intersections with other collector and arterial roadways within the designated service area. If additional traffic counts are warranted, they shall be the applicant's responsibility.
 3. *Contents.* The transportation impact analysis shall contain the following:

- (a) A detailed description of the collector and arterial road network, including existing and proposed roadway widths and right-of-way widths; existing and proposed traffic signals and traffic control devices; existing and proposed ingress and egress locations, including existing or proposed acceleration or deceleration lanes or turning lane improvements.
 - (b) A detailed description of the existing and proposed land uses within the impacted study area including stages of construction and anticipated completion dates.
 - (c) A detailed description of the existing traffic conditions, including the Average Annual Daily Traffic (AADT) and the highest average peak hour volume for all collector and arterial roads within the study area. The AADT shall be based on a current twenty-four (24) hour traffic count provided by the applicant. The current twenty-four (24) hour traffic count shall be adjusted to compensate for seasonal variations. This adjustment shall be determined by utilizing Florida Department of Transportation (DOT) or traffic counts calculated quarterly at traffic count stations in the Town of Malabar. The methodology and assumptions underlying the annual adjustment shall be clearly stated. The average peak hour traffic volume shall be the highest average peak hour volume for any weekday twenty-four (24) hour period.
 - (d) A detailed Service Level C condition analysis of all collector and arterial roadways and intersections within the study area based on procedures outlined in the 1965 Highway Capacity Manual (including the Northwestern Monographs) and in the Transportation Research Circular No. 212, "Interim Material on Highway Capacity," Transportation Research Board, January, 1980.
 - (e) A description of all the existing collector and arterial roadways and intersections that are at or below the Service Level C condition (Service Levels C, D, E, or F).
 - (f) A detailed analysis of traffic impact of the development, including trip generations (average 24-hour weekday and highest average weekday hour), internal and external trips, trip absorptions and trip distributions over all collector and arterial roads within the study area. The trip generation shall be based on the latest edition of the Institute of Traffic Engineers Trip Generation Manual, unless a qualified traffic engineer demonstrates that unique qualities of the development will result in different rates. All methodology and assumptions must be clearly stated.
 - (g) A detailed cumulative transportation impact of the existing traffic conditions including traffic from the development, normal increases in traffic and increases from allocation of road capacity to already approved projects. This analysis must identify projected AADT and peak hour volumes for all the collector and arterial roads and must describe all the roadways and intersections that will be at or below the Service Level C daily condition or Service Level D peak hour condition.
4. *Traffic Study and Traffic Data Inventory and File.* The Town Engineer shall keep a file on all traffic studies including the future capacity allocated for each project. In determining the projected demand in subsection 1-7.2(D)(3)(g) above, the impact analysis shall include trips already allocated in previous development approvals. The Town shall provide information when available and where appropriate data already exists in order to prevent duplication of efforts and unnecessary costs.
 5. *Improvements to Roadways and/or Traffic Control Devices.* Transportation improvements such as intersection improvements; additional turning, acceleration or deceleration lanes; modified land delineations; new or improved traffic control devices; or other such improvements may be required in order to maintain a level of service C daily condition and/or a level of service D peak hour condition. In such case, the applicant for a development permit may be required to fund and/or install the necessary improvements or provide a legal assurance, such as a performance bond or other surety approved by the Town Attorney, prior to the issuance of a building permit. Where the traffic impact does not generate traffic volume that substantiates the total improvement needs, the Town Council shall determine

an equitable participation in the required improvement. The participation by the applicant may, at the discretion of the Town Council, consist of a pro-rata dollar share of improvement costs.

- E. *Open Space and Landscape.* Open space shall be comprised of permeable open surfaces, excluding principal structures and impermeable surfaces. No parking areas shall be included as open area. Active recreation areas may be counted as open area.
1. *Residential Open Space Requirement.* All residential development shall preserve a minimum of fifty (50) percent of the upland area as open space. Uplands shall be defined as those areas which are not permanent water bodies or wetlands as defined in Section 1-7.2(G)(2) at the time of application. A maximum of thirty (30) percent of any totally landlocked water body may be credited as open space. At no time shall water bodies comprise more than twenty (20) percent of the total upland open space requirements.
 2. *Non-Residential Open Space Requirement.* Non-residential development shall provide a minimum of twenty (20) percent open space.
 3. *Mixed Use Open Space Requirement.* Where residential and non-residential development is permitted pursuant to the Town of Malabar Land Development Regulations, the following pro rata open space requirement shall be enforced.

$$OS = \frac{NRA}{TA} \times .2 TA + \frac{RA}{TA} \times .5 TA$$

OS = Open Space
NRA = Non-Residential Acreage
RA = Residential Acreage
TA = Total Area

4. *Use of Open Space.* Open space and spaces between buildings required by this Chapter [Code] shall be located and improved so as to reasonably serve the purposes for which the requirements are intended. These purposes include provisions of adequate light and air, appropriate separation between buildings and uses, enhancement of privacy, sufficient area for recreation and leisure pursuits (in residential areas) and to facilitate surface water drainage.
 5. *Preserve Natural Landscape.* The natural landscape of the site shall be preserved as much as possible for purposes of enhancing the general appearance of the site as well as to prevent excessive storm water run-off, erosion, siltation and dust.
- F. *Required Screening of Abutting Residential and Non-Residential Uses.* In order to maintain stability of residential areas, non-residential development within or abutting residential districts and multiple family development abutting single family residential districts, shall provide a fence or a wall or a combination of a berm and landscaping so as to provide a continuous ninety (90) percent opaque solid screen not less than eight (8) feet in height to form a continuous screen along such abutting property lines. In addition, one tree shall be provided for each thirty-five (35) lineal feet or fraction thereof of such landscape barrier. Notwithstanding, all developments shall comply with the landscape requirements of Article XIV. Where a conflict exists with the standards of this paragraph, the more restrictive requirement shall prevail.

Credit may be given for existing plant material against the requirements of this section. Adjustments may be rendered by the Town Council to the requirements of this paragraph based on demonstrated need by the applicant and recommendations of Town Staff and the Planning and Zoning Board. The site plan applicant and successors in ownership shall maintain the continuous screen in perpetuity.

- G. *Flood Prone Land and Wetland Preservation.* In order to promote and preserve natural hydrological conditions and to preserve water recharge areas, water supply and water quality, and natural habitats, the following regulations shall be applied to wetland areas.

1. *Flood Prone Land.* Construction in flood prone areas shall comply with the Town's flood plain management policies.
2. *Wetland Defined.* Wetland areas shall include hydric soils and wetland species identified by the DER pursuant to § 17-4.022, F.A.C. Site specific investigations shall confirm the existence of wetland systems based on on-site soil and vegetative analysis with assistance of appropriate representatives of the State Department of Environmental Regulation, the St. John's River Water Management District, U.S. Army Corps of Engineers, and the U. S. Soil Conservation Service.
3. *Wetland Development Restrictions and Interpretations.* No development other than approved passive recreation, open space, restricted accessway, bird sanctuary, natural stormwater retention/detention, or natural preserve shall be allowed in a wetland area unless "competent evidence" indicates that:
 - (a) Dominant vegetation is no longer comprised of wetland types normally found in the specified soil; and
 - (b) The water regime has been permanently altered artificially or naturally in a manner to preclude its associated watershed areas from functioning as wetlands. Applicants for site plan review shall have an opportunity to so demonstrate that any wetland designations within the confines of their property no longer function as wetlands as defined above. The County urban forester, the soil conservationist as well as representatives of the State Department of Environmental Regulation, U.S. Army Corps of Engineers and the St. John's River Water Management District may be made a part of the site plan review process to assist in identifying and delineating wetlands. The applicant may request that a waiver of the provisions of this section be granted by the Planning and Zoning Board for small isolated marginal wetlands for which the developer shall provide viable compensatory preserve areas which mitigate against a loss of viable wetland systems. The Planning and Zoning Board shall consider the recommendation of the Town Engineer prior to taking action on such a request and shall grant the same only in the case of an overriding public interest. Finally, this section shall not prevent the construction of one single family home on existing lots of record.

The provisions of Article VIII: Surface Water Management are hereby incorporated into this subsection by reference.

- H. *Available Potable Water.* All future applications for new development shall be required to connect to a central water system except as herein provided.
 1. *Exceptions for Limited Scale Development.* When connection to a central water system is not feasible, applicants for limited scale development adaptive to service by an interim water system, may be allowed if approved by the County Director of Public Health subject to the following conditions:
 - a. Assurance in writing from a central water utility that extension of lines to the development is not part of its master plan for expansion; and,
 - b. Agreement by the applicant that the system shall be connected to the central utility system at no cost to the Town when service becomes available. The applicant shall be required to post a performance bond or other surety approved by the Town Council after considering recommendation of the Town Engineer and the Town Attorney. The performance bond shall be for the express purpose of constructing water system improvements required as a condition of subdivision approval.
 2. *Intent of Regulating Procedure.* The intent of this permitting procedure is: (1) to maintain a comprehensive data base concerning water supply and quality; (2) to discourage unregulated proliferation of private water systems; and (3) to achieve a subsystem design which can be effectively and economically integrated into a central public system certified and regulated by an approved local public service entity at a later point in time and to

encourage a compact urban development pattern by managing the location, timing and scale of land development to assure that new development can be efficiently served by public facilities without adversely impacting the City's fiscal capacity; and (4) to discourage all new subdivision of land unless served by a central water utility and to similarly discourage nonresidential development on existing lots of record when such sites are not serviced by a central water utility.

3. *Testing of Private Wells.* In addition, the Town may undertake any necessary action to prevent or remedy water supply and water quality problems. To this the Town may request analysis of water quality and supply of all permitted private wells based on evolving problems and issues associated with water resources. The private well owner may be assessed by the Town after due public hearings for needed water quality, supply problems, requisite testing, laboratory analysis, and improvements, deemed necessary and fiscally equitable.
- I. *Wastewater Service.* All applicants for development shall be required to connect to a public wastewater utility regulated by the Public Service Commission, the Department of Environmental Regulation (DER) and/or the County Environmental Health Department. Where a system for wastewater is unavailable, the applicant shall provide an interim wastewater system approved by the DER and/or the County Environmental Health Department and shall agree in writing that the system will be connected to a public wastewater utility at no cost to the Town when service becomes available.
 1. *Intent and Purpose of Regulating Wastewater Disposal Systems.* The intent of this provision is: (1) to discourage unregulated proliferation of private package treatment plants; (2) to achieve a subsystem design which can be effectively and economically integrated into a major central public wastewater system at a future point in time which would be certified and regulated by a local public entity; and (3) to encourage a compact urban development pattern by managing the location, timing, and scale of land development to assure that new development can be efficiently served by public facilities without adversely impacting the City's fiscal capacity.
 2. *Design Standards and Required Guarantee.* The system shall be designed to satisfy performance standards of the Department of Environmental Regulation (DER), other applicable regional, state, or federal standards, or standards which may be hereafter adopted by the Town. The applicant shall be required to post a performance bond or other surety approved by the Town Council after considering recommendations of the Town Engineer and the Town Attorney. The performance bond shall be for the express purpose of constructing waste water system improvements required as a condition of subdivision approval.
 3. *Regulating Use of Septic Tanks and Wastewater Disposal Fields.* Notwithstanding any other provisions of this Code, when septic tank and waste disposal field is the only means of individual sewage disposal, the County Environmental Health Department shall enforce State law regulating use of septic tanks and wastewater disposal fields.
 - J. *Soil Erosion, Sedimentation Control, and Estuary Water Resource Protection.*
 1. *Applicability.* In order to prevent both soil erosion and sedimentation, and to protect both ground and surface water resources, a soil erosion and sedimentation control plan shall be required as a part of an application for site plan review whenever a development will involve any clearing, grading, or other form of disturbing land by the movement of earth, provided that any one of the following descriptions applies to said movement:
 - (a) Excavation, fill, or any combination thereof will exceed five hundred (500) cubic yards.
 - (b) Fill will exceed three (3) feet in vertical depth at its deepest point as measured from the natural ground surface.
 - (c) Excavation will exceed four (4) feet in vertical depth at its deepest point as measured from the natural ground surface.

- (d) Excavation, fill or any combination thereof will exceed an area of one thousand (1,000) square feet.
 - (e) Plant and/or tree cover is to be removed from an area exceeding one thousand (1,000) square feet on any parcel of land.
 - (f) Whenever excavation or fill is proposed within one hundred feet of a stream, stream channel, or body of water, a soil erosion and sedimentation control plan shall be provided.
2. *Definitions.* For the purposes of this subsection 1-7.2(J) the following definitions are provided:
- (a) *Soil erosion* shall mean any removal and/or loss of soil by the action of water, gravity, or wind. Erosion includes both the detachment and transport of soil particles.
 - (b) *Sedimentation* shall mean the settling out of the soil particles which are transported by water or wind. Sedimentation occurs when the velocity of water or wind in which soil particles are suspended is slowed to a sufficient degree and for a sufficient period of time to allow the particles to settle out of suspension or when the degree of slope is lessened to achieve the same result.
 - (c) *Erodible slope* shall mean all slopes with inclines in excess of four (4) percent unless modified by the Town Engineer based on consideration of specific soil conditions.
 - (d) *Large flat surface area (unpaved)* shall mean an area which is flat or whose slope is less than four (4) percent and which consists of more than one thousand (1,000) square feet of exposed soil.
3. *Erosion Water Quality Control Measures.* All measures necessary to minimize water quality degradation soil erosion and to control sedimentation in the disturbed land area shall be implemented. The following protection shall be provided for all disturbed areas: minimize velocities of water runoff, maximize protection of disturbed areas from stormwater runoff, and retain sedimentation within the development site as early as possible following disturbances. A list of major problem areas for erosion and sedimentation water control degradation control follows. For each one, the purpose(s) of requiring control is described. Soil erosion and sedimentation control measures for all such areas shall be provided with a view toward achieving the specific purpose listed below for which a control plan is required:
- (a) *Erodible slopes:* Prevent detachment and transportation of soil particles from slope.
 - (b) *Streams, streambeds, streambanks, bodies of water, lake shorelines:* Prevent detachment and transportation of soil particles.
 - (c) *Drainageways:* Prevent detachment and transportation of soil particles (which would otherwise deposit in streams, bodies of water, or wetlands); promote deposit or sediment loads (traversing these areas) before these reach bodies of water.
 - (d) *Land adjacent to streams, ponds, lakes, and wetlands:* Prevent detachment and transportation of soil particles. The applicant shall not adversely impact aquatic vegetation within the sensitive transition zone located between the upland and the mean high water line (ordinary high water line for non-tidal waters). No such vegetation shall be disturbed without approval of the Town. Any such approval shall be based on a demonstrated necessity which promotes the overall public health, safety and welfare. Furthermore, any such disturbance of aquatic vegetation shall be compensated by revegetation based on a plan approved by the Town as stipulated herein. The applicant shall coordinate plans for development along the riverfront or tidal waters with the Florida Department of Environmental Regulation as well as the U.S. Army Corp of Engineers where tidal waters might be impacted. Where deemed appropriate by the Town, the site plan shall include the planting of native indigenous aquatic plant vegetation to promote stability of the shoreline and to enhance water quality.

- (e) *Enclosed drainage structure*: Prevent sedimentation in structure, erosion at outfall of system, and deposit of sediment loads within system or beyond it.
 - (f) *Large flat surface areas (unpaved)*: Prevent detachment of soil particles and their off-site transportation.
 - (g) *Impervious surfaces*: Prevent the detachment and transportation of soil (in response to an increase in the rate and/or volume of runoff of the site or its concentration caused by impervious surfaces).
 - (h) *Borrow and stockpile areas*: Divert runoff from face of slopes which are exposed in the excavation process; convey runoff in stabilized channels to stable disposal points; leave borrow areas and stockpiles in stable condition. Creation of water bodies by excavation and/or impoundment shall comply with applicable provisions of Article VIII.
 - (i) *Adjacent properties*: Prevent their erosion and/or being deposited with sediment.
- K. *Additional Considerations*. The Planning and Zoning Board or the Town Council may require additional information be provided by the petitioner for site plan review in order to carry out a review process which is necessary to fulfill the purpose, intent and spirit of this Chapter [Code].

(Ord. No. 91-1, 3-19-91)

Section 1-7.3. - Information to be included in site plan.

A site plan, for the purposes of this Section, shall include, but not necessarily be limited to, the following requirements:

1. Site plan with lot configuration, finished ground floor elevations, contours and designating number of dwelling units, square footage of site, building coverage, square footage of paved areas and open area, and setbacks to scale indicating compliance with regulations.
2. A scaled drawing of the side, front and rear facades of the building or structure, including roof pitch, fenestration including treatment of roof line, windows, and doors as well as a description of materials to be used.
3. Generalized floor plan indicating uses and square footage of each proposed use within each building or structure, building exterior construction material and color, and building height.
4. Location and character of all outside facilities for waste disposal; storage areas; or display.
5. Location and dimensions of all curb cuts, driveways, dedicated cross-easements including their design, location, alignment, dimensions, and specifications; details of off-street parking and loading areas, and vehicular surfaces available for maneuvering, including surface materials, number of employees and number and type of vehicles owned by the establishment. Any combined off-street parking facilities shall be submitted with an agreement specifying the nature of the arrangement, its anticipated duration, and signatures of all concerned property owners.
6. Location of all pedestrian walks, malls, yards and open spaces.
7. Location, size, character, color and copy, height and design of all signs.
8. Location and character of landscaped areas and recreation areas.
9. Location, design and character of all public, semi-public, or private utilities such as water and wastewater disposal facilities, underground or overhead electric lines, gas transmission lines, or other similar facilities or services.
10. Location, height and general character of perimeter or ornamental walls, fences, landscaping, including berms and other required screening devices and any other plans for protecting adjacent property owners.

11. Surface water drainage facilities plan showing existing and proposed grading, drainage patterns and earthwork computations, certified by an engineer or architect registered in the State of Florida.
12. Location of existing easements and rights-of-way.
13. Land survey with complete legal description prepared and certified by a registered surveyor. All architecture or engineering designs must be prepared by a professional architect or engineer registered in the State of Florida pursuant to Florida Statutes 467 and 471 as exists or hereafter amended and which require an appropriate seal on the subject plan prior to issuance of a building permit.
14. Verified statement showing each and every individual person having a legal and/or equitable ownership interest in the subject property except publicly held corporations whose stock is traded on a nationally recognized stock exchange, in which case the name and address of the corporation and principal executive officers will be sufficient.
15. The applicant for site plan review may, at his option, submit a preliminary site plan sketch indicating a general idea of how it is proposed to develop the parcel. Upon tentative approval of a sketch, the applicant can then proceed to have a detailed site plan prepared in accordance with the requirements in this section.

(Ord. No. 91-1, 3-19-91)

Section 1-7.4. - Approval, disapproval and appeal procedure.

- A. *Approval Procedure.* Upon the approval of such site plan by the Town Council, a building permit may be issued pursuant to Subsection 1-7.4(B) by the Town Building Official. Appeals to disapprovals by the Town Council shall be to the Court of jurisdiction.
- B. *Timing of the Release of Building Permits.* No permits shall be granted by the Building Official until the time for appeal from the decision of the Town Council as herein provided shall have expired. Appeal to the Courts shall not bar the issuance of permits unless the court grants an injunction.
- C. *Disapproval Procedure.* If the Planning and Zoning Board recommends denial of a site plan or if the Town Council denies a site plan approval, the reasons said plan was denied shall be specified with specific reference to those sections of the applicable Town Ordinances on which said denial was based. No reasons other than those so stated shall be presented to the Town Council or to the court.

Section 1-7.5. - Termination, extension and transferability.

The site plan approval shall terminate twelve (12) months thereafter, if construction has not been started as evidenced by steady and continuous progress, including the pouring of footings by said termination date. Extensions may be granted by the Town Council at its sole and absolute discretion. Any request for extension shall be made in writing prior to the expiration of the site plan and such request for extension shall be reviewed by the Planning and Zoning Board which shall make a recommendation on the request for extension to the Town Council. In the event the property receiving site plan approval shall be sold, transferred, leased, or the ownership thereof changes in any way whatsoever, the site plan approval shall be transferrable.

(Ord. No. 08-09, § 1, 9-8-08)

Section 1-7.6. - Violations.

Failure to comply and continually maintain all approved elements of an approved site plan, including landscape, appearance and other site development features, shall be a violation of this Code subject to enforcement and penalty procedure of Section 1-12.7 of this Code.

Malabar Land Development Code
Article XIV
Landscape Regulations

Article XIV - LANDSCAPE REGULATIONS^[1]

Footnotes:

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Cross reference— Buildings and building regulations, ch. 6.

Section 1-14.1. - Purpose and intent.

The intent of these landscape regulations shall be to require screening and beautification of all storage, parking, display or sales areas so as to improve, protect and preserve the Town's unique aesthetic characteristics and qualities.

Section 1-14.2. - Applicability.

Article XIV shall apply to all development, excepting single family detached homes. A landscape plan approval shall be required for all new development within the Town of Malabar, except for single family detached homes, prior to the issuance of a building permit. The following minimum standards for landscaping shall be applicable to all storage, parking, display, sales or accessory vehicular use areas when created or used in connection with new construction, remodeling or enlargement requiring updated code compliance.

Section 1-14.3. - Impact of more restrictive regulations.

The provisions of this section shall be subject to other applicable regulations where such regulations are more restrictive and are not otherwise inconsistent with the provisions of this section.

Section 1-14.4. - Definitions.

Accessory Vehicular Use Area. All land upon which vehicles traverse the property, excluding the parking lot.

Accessway. A paved or unpaved area intended to provide ingress and egress from a public or private right-of-way to a public or private premises, including an off-street parking area.

Barrier. A solid and unbroken visual screen, including a masonry fence or solid wood fence which presents a one hundred (100) percent opaque screen. An open chain link fence shall not constitute a barrier.

Berm. Mounding of soil which is planted with living plant material designed as a natural landscape buffer to screen incompatible land uses or to absorb or otherwise reduce nuisance impacts, such as noise, smoke, glare, or other similar impacts.

Grass. Green herbage, commonly referred to as grass, which is commonly grown year round in the Town of Malabar. For the purpose of this section no artificial grass shall be considered living plant material.

Ground Cover. Low growing living plant material or landscaping material.

Hedge. Solid and unbroken visual screen of self-supporting living plant material.

Interior Parking Space. Any parking space which is not adjacent to a required landscape strip.

Landscape Strip. A strip containing trees, barriers, ground cover and/or other plant material as required by this section.

Lawn Grass. Grass areas shall be planted in species normally grown as permanent lawns in the vicinity of the Town of Malabar, Florida. Grass areas may be sodded, plugged, sprigged or seeded except that solid sod shall be used in swales or other areas subject to erosion.

When grass seed is sowed it shall be a variety of seed which produces complete coverage within ninety (90) days from sowing. In areas where a ground cover other than solid sod or grass seed is used, nursegrass seed shall be sown for immediate effect and protection until coverage is otherwise achieved.

Living Plant Material. Grass, ground cover, shrubs, vines and trees.

Shrubs. Self-supporting, woody, evergreen plants smaller than a tree and usually branching from or near the ground.

Synthetic Plants. Synthetic or artificial material in the form of trees, shrubs, ground covers or vines shall not be used in lieu of plant requirements in this section.

Trees. Self-supporting, wood perennial plants of species which normally at maturity have a trunk with a diameter of at least three (3) inches measured four and one-half (4½) feet above grade and have an overall height of a minimum of fifteen (15) feet.

Section 1-14.5. - Minimum requirements for landscape strips.

A. *Minimum Width.* A landscape strip shall be a minimum of ten (10) feet in width.

All property other than the required landscaped strip lying between the right-of-way and off-street parking area or other vehicular use area shall be landscaped with grass or other ground cover.

Necessary accessways from the public right-of-way through all such landscaping shall be permitted to service the parking or other vehicular use areas and such accessways may be subtracted from the lineal dimension used to determine the number of trees required.

B. *Perimeter Landscaping.* A landscape strip is required along the entire perimeter of all storage, parking, display, sales or accessory vehicular use areas except along the portion or portions of the perimeter which are entirely screened visually from adjacent property by buildings on the property being improved.

C. *Attachments.* It shall be unlawful to attach anything to a tree trunk or stem having a diameter of six (6) inches or more, other than protective wires, braces or other similar noninjurious materials.

D. *Ground Removal.* It shall be unlawful to remove any material or ground within a five (5) foot radius of any tree trunk or stem having a diameter of six (6) inches or more, which is necessary for the growth of the tree.

E. *Encroachment of the "Drip Line."* During the construction stage of development, the developer shall not cause or allow the cleaning or storage of equipment or material within the "drip line" (see illustration) of any tree or groups of trees to be maintained. Neither shall the developer cause or allow the disposal of waste material such as paint, oil, solvents, asphalt, concrete, mortar or any other material harmful to the life of a tree within the "drip line" of any tree or groups of trees.

add figure page XIV-3

Drip line conforms to outside perimeter of crown of tree.

Not less than 1;inch; × 2;inch; wood uprights minimum 36;inch; spacing and 36;inch; above grade. Rail or cross bracing shall be not less than 1;inch; × 3;inch; material. 24;inch; in ground

ELEVATION

diameter of tree

diameter of tree

PLAN

PROTECTIVE BARRIER DETAIL

Notes:

1. Tree(s) to be protected shall be centered within protective barrier (minimum shown above).
2. Protective barrier shall be enlarged when necessary to enclose all exposed roots.

Section 1-14.6. - Landscaping and tree planting.

Table 1-14.6 below presents a tabular summary of the minimum requirements for landscaping and tree planting along public street frontages; within the interior of parking lots; and along the other perimeters of a parking lot. Section 1-14.10 provides additional requirements for interior landscaped areas and non-vehicular use areas.

TABLE 1-14.6

Landscaping/Trees	Street Frontage	Interior of Off-Street Parking Lot (1)	Other Perimeter Requirements Non-Vehicular Use Areas
Tree Planting	One (1) canopy shade tree and ten (10) shrubs per thirty-five lineal feet or fraction thereof of public street frontage.	One (1) canopy shade tree per one hundred (100) square feet or fraction thereof of interior landscape area.	One (1) canopy shade tree per thirty-five lineal feet or fraction thereof.
Landscaping	A landscape strip ten (10) feet wide along each public street frontage. The landscaped strip shall be at least forty (40) feet wide along the Malabar Road (SR 514) corridor.	Five (5) square feet of landscaped area per one hundred (100) square feet or fraction thereof paved off-street parking surface. The minimum dimension shall be ten (10) feet [by ten] (10) feet for any landscape strip and no landscape area shall be less than 100 square feet. All landscaped strips shall be constructed with concrete curbing.	A landscape strip ten (10) feet wide along the perimeter of the paved parking surface.
		Where two rows of parking spaces are adjacent to one another (i.e., head to head), a	

		<p>landscape strip with a minimum dimension of ten (10) feet shall be planted along the common boundary.</p> <p>The end of each aisle and corner area must be landscaped. In addition, each ten parking stalls must be separated by a landscaped area.</p>
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(1) Cross-reference Section 1-14.6

A. *Interior Landscape Requirements.* The following regulations in addition to Table 1-14.6 shall govern interior landscaping and plant material.

1. *Size and Composition of Interior Landscaping.* All off-street parking areas excepting single family residences shall be landscaped with a minimum of five (5) square feet of landscape area for each one hundred square feet of paved parking area. Each landscape area shall have a minimum dimension of ten (10) feet and shall be a minimum of one hundred (100) square feet in size and contain a minimum of one (1) tree. The balance of said area shall contain grass, ground cover or other living plant material not exceeding two (2) feet in height, except that individual shrubs which do not cause a sight hazard will be permitted to exceed two (2) feet in height. The total number of required trees shall be one (1) tree for each one hundred (100) square feet or fraction thereof of required landscape area.
2. *Use of Interior Landscape Strip.* Interior parking landscaping shall, insofar as possible, be used to delineate and guide major traffic movement within the parking area and to prevent cross space driving wherever possible. Landscaping dividing strips with concrete curbing along the outer perimeter and with or without walkways, shall be used to subdivide parking areas. Landscaping shall be designed so no more than ten (10) spaces shall be in an uninterrupted row.
3. *Other Vehicular Use Area Requirements.* Landscaped areas shall be required for drives, aisles, standing zones and other vehicular use areas. Landscaping shall be required at a rate of five (5) square feet of landscaping for each one hundred (100) square feet or fraction thereof of paved area.
4. *Landscape Specifications for Non-Vehicular Open Space.* All non-vehicular open spaces on any developed site in all zoning districts, except for single-family detached dwellings, shall conform to the minimum landscaping requirements herein provided unless requirements of a stricter nature are specified elsewhere. Non-vehicular open space shall include all required open space in this Code, pursuant to the review of site plans. Such non-vehicular open space areas shall not include water areas. This requirement may be waived by the Building Official for non-vehicular open areas which are inappropriate for the introduction of trees.

Grass, ground cover, shrubs, and other landscaping materials shall be used to treat all ground not covered by building, paving, or other structures. All structures shall be treated

with landscaping so as to enhance the appearance of the structure and to screen any detractive or unsightly appearance.

Trees shall be planted in the non-vehicular open space to meet the following requirements:

Percent of Site in Non-Vehicular Open Space (N.O.S.)	Tree Requirement
Less than 30%	4 trees/2000 Sq. Ft. N.O.S.
30%—39%	4 trees/2500 Sq. Ft. N.O.S.
40%—49%	4 trees/3000 Sq. Ft. N.O.S.
50%—59%	4 trees/3500 Sq. Ft. N.O.S.
60% or more	4 trees/4000 Sq. Ft. N.O.S.

- B. *Waiver Condition.* Tree requirements, as specified above, may be waived along property lines where the required landscape strip is contiguous and adjacent to an existing landscape strip which provides a continuous solid screen in compliance with all provisions of this Article. Such a waiver shall be approved only after the impacted adjacent property owner has signed an affidavit of consent. All such approved landscaping, including pre-existing trees and shrubs, shall be maintained in perpetuity and administrative provisions governing perpetual maintenance violations and penalties shall be enforced.
- C. *Location of Tree Plantings.* Trees, as required above, shall be spaced in clusters or situated in strategic locations consistent with good principles of design and plant installation.
- D. *Credit for Existing Trees.* Credit shall be granted for trees which are preserved on a site and which meet the tree requirements of any landscaping provision of this Section. Where a tree is of exceptional quality, as determined by the Building Official, a two-tree credit for the preserved tree may be granted. Exceptional quality shall be judged on the basis of such factors as extraordinary size of tree, vigorous health, large canopy cover, historic value, rareness, and age. No credit will be granted for preserved trees which are classified as undesirable, are extremely poor specimens or which are in declining health.

Section 1-14.7. - Location of landscape strip.

- A. *Alignment of Landscape Strip.* The required landscape strip shall be located within the property line and/or building setback as established by the Zoning Code.
- B. *Adjustments in Alignment of Landscape Strip.* Landscape strips, when required in easements, may be adjusted by the Building Official. A decision on any related issue in dispute shall be resolved by the Town Council.

Section 1-14.8. - Required screening material in landscape strip.

Any combination of barriers, hedge or landscaped berm shall be planted or installed along the entire length of each required landscape strip. In all residential or commercial districts, the barrier, hedge, or landscape berm shall be a minimum of four (4) feet in height; except in commercial districts, where the

barrier, hedge or landscaped berm along street rights-of-way shall be a minimum of three (3) feet in height. In all industrial districts, the barrier, hedge or landscaped berm shall be a minimum of five (5) feet in height. There shall be one (1) shrub for each three and one-half (3.5) lineal feet of nonliving barrier and the shrub(s) shall be planted on the street side along public rights-of-way. All non-living barriers abutting public streets shall be at least eighteen (18) inches inside the property line or within the building setback line, whichever is greater.

Section 1-14.9. - Specifications for living plant materials.

- A. *Trees.* All trees shall be a minimum of eight (8) feet in height with a minimum of six (6) feet of clear trunk space immediately after planting.

Trees shall be of a species having an average mature crown of greater than thirty (30) feet and having trunks which can be maintained with over six (6) feet of clear wood. Trees or palms having an average mature crown spread of less than thirty (30) feet may be substituted by grouping the same so as to create the equivalent of twenty (20) feet crown spread. Such a grouping shall count as one tree toward meeting the tree requirement for any provisions herein. If palms are used, they shall constitute no more than twenty-five (25) percent of the total tree requirements for any provisions herein. No other tree species shall account for more than fifty (50) percent of the total number of trees.

- B. *Shrubs and Hedges.* Individually planted shrubs shall be a minimum of twenty-four (24) inches in height immediately after planting. Shrubs planted for required hedges shall have minimum heights immediately after planting as follows: two (2) feet for three (3) feet high hedges; two and one-half (2½) feet for four (4) feet high hedges and three (3) feet for five (5) feet high hedges. The Building Official may waive the size and minimum standard specifications if the applicant can demonstrate that current market conditions are such that shrubs and hedges meeting these specifications are not readily available.

Hedges shall reach the required height and form a solid and unbroken visual screen within one year after planting.

- C. *Administration of Waiver Provisions.* Where buildings or barriers are located on adjacent properties within five (5) feet of areas required to be landscaped, the required landscape strip shall be installed; however, a waiver may be granted for the required barrier.
- D. *Lawn Grass.* Grass areas shall be planted in species normally grown as permanent lawns in the vicinity of the Town of Malabar, Florida. Grass areas may be sodded, plugged, sprigged or seeded except that solid sod shall be used in swales or other areas subject to erosion.

When grass seed is sowed it shall be a variety of seed which produces complete coverage within ninety (90) days from sowing. In areas where a ground cover other than solid sod or grass seed is used, nursegrass seed shall be sown for immediate effect and protection until coverage is otherwise achieved.

- E. *Quality.* All plant material shall comply with Section 1-14.14.
- F. *Synthetic Plants.* Synthetic or artificial material in the form of trees, shrubs, ground covers or vines shall not be used in lieu of plant requirements in this Section.
- G. *Berms.* Berms are encouraged for use in meeting the landscape barrier requirements of this Section. If berms are utilized, they shall be landscaped with living plant material to achieve the required heights.

Section 1-14.10. - Protection of landscape strips.

All landscape strips shall be protected from vehicular encroachment by raised curbing.

Section 1-14.11. - Required coverage.

All landscape strips shall be covered by a living plant material, excepting a mulched area having a radius no larger than three (3) feet from the outside diameter of the fill.

Section 1-14.12. - Required sight distances for landscaping adjacent to public rights-of-way and points of access.

When an accessway intersects a public right-of-way or when the subject property abuts the intersection of two (2) or more public rights-of-way, all landscaping within the triangular area described below in Subsection 1-14.12(A) shall allow unobstructed cross-visibility at a level between thirty (30) inches above the sidewalk grade and six (6) feet above the sidewalk grade. However, trees or palms shall be permitted provided the same are trimmed so as to allow visibility at the levels indicated above, and provided they are located so as not to create a traffic hazard.

A. *Definition of Required Clear Zones.*

1. *Clear Zone Adjacent to the Intersection of an Accessway and a Public Right-Of-Way.* The triangular areas of property on both sides of an accessway formed by the intersection of each side of the accessway and the public right-of-way line for a distance of fifteen (15) feet in length along the accessway and eight (8) feet in length along the public right-of-way, and the third line connecting the ends of the two sides.
2. *Clear Zone Adjacent to the Intersection of Two or More Intersecting Rights-Of-Way.* The area of property located at a corner formed by the intersection of two (2) or more public rights-of-way with two (2) sides of the triangular area being thirty (30) feet in length along the abutting public rights-of-way measured from their point of intersection, and the third side being a line connecting the ends of the other two lines.

Section 1-14.13. - Required landscape plan submittal.

A. *Landscape Plan Components.* A landscape plan shall be submitted to and approved by the Building Official prior to the issuance of a site plan where applicable or prior to the issuance of building or paving permit where a site plan is not applicable. The landscape plan shall contain the following:

1. Name, address and phone number of the owner and designer.
2. North arrow, scale and date—minimum scale one (1) inch = fifty (50) feet.
3. Property lines, easements and right-of-ways with internal and property line dimensions.
4. Location of existing or proposed utility service.
5. Location and size of any existing or proposed structures.
6. Location and size of any existing or proposed site features, such as earthen mounds, swales, walls, and water areas.
7. Location and size of any existing or proposed vehicular use areas.
8. Location and size of any existing or proposed sidewalks, curbs and wheel stops.
9. Location of sprinkler heads, hose bibs or quick couplers and other information on irrigation.
10. Calculations of required type, dimensions, and square footage of landscape material and of required landscape areas, including: total site area, parking areas, other vehicular use area, percentage of non-vehicular open space, perimeter and interior landscape strips, required number of trees.
11. Location of required landscape areas and dimensions.
12. Location, name, height, and size of all existing plant material to be retained.
13. Location, size, height, and description of all landscape material including name, quantity, quality, spacing and specified size and specification of all plant material.
14. Height, width, type, material, and location of all barriers of nonliving material.
15. Indicate location, dimensions and area of landscaping for freestanding signs.

16. Show all landscaping, buildings or other improvements on adjacent property within five (5) feet of the common property line.

The landscaping plan shall be drawn by a Landscape Architect or other person with comparable experience in the field of landscaping.

- B. *Review and Approval Procedure.* Plot plans may be subject to review and approval of such Town Official as may be deemed advisable by the Town Council. The Building Official or other Town representative designated by the Town Council shall inspect all landscaping and no certificate of approval and occupancy shall be issued until the landscaping is completed in accordance with the submitted plot plan and the requirements of this Section. A decision on any related issue in dispute shall be resolved by Town Council which may consider the technical advice of the County Urban Forester.

Section 1-14.14. - Plant quality, installation, prohibited species.

- A. *Plant Quality.* All plant materials shall be of a species adaptive to the East Central Florida region and shall conform to standards for "Florida No. 1" or better, as stated in "Grades and Standards for Nursery Plants," Part I (1973) and Part II (1975), State of Florida, Department of Agriculture, as may be amended hereafter. Grass sod shall be clean and reasonably free of noxious pests or diseases.
- B. *Installation.* Installation of all landscaping shall be in a sound workmanship-like manner according to accepted good planting procedures.
- C. *Prohibited Species.* Prohibited species of trees shall be those species whose roots are known to cause damage to public roadways or other public improvements. Prohibited trees include the following:

Australian Pine (*Casuarina equisetifolia*)
(*Casuarina lepidophlia*)
(*Casuarina cumminghamiana*)

Chinaberry (*Melia azedarch*)

Ear Pod (*Enterlobium cyclocarpum*)

Brazilian pepper (*Schinus terebinthifolius*)

Melaleuca (*Melaleuca leucadendron*)

Prohibited trees shall not be used for requirements of this Article.

Section 1-14.15. - Maintenance requirements, including irrigation.

Maintenance of landscaping shall be the responsibility of the owner, tenant or agent, jointly and severally. Said landscaping shall be maintained in a good condition so as to present a healthy, neat and orderly appearance. All landscaped areas must be equipped with an irrigation system approved by the Building Official. All landscaped areas shall be kept free of weeds, refuse and debris.

If at any time after issuance of a Certificate of Occupancy or other form of approval, the landscaping of a development to which this Article is applicable is found to be in non-conformance, the Building Official shall issue notice to the owner that action is required to comply with this section and shall describe what action is required to comply. The owner, tenant, or agent shall have thirty (30) days to restore the landscaping as required. If the landscaping is not restored within the allotted time, such person shall be in violation of this Ordinance, the punishment for which shall be as provided pursuant to the Town of Malabar Code of Ordinances.

If after due process the land owner fails to comply with the order of the Town, the Town Council may order the Building Official to enter a contract for Town Council approval for purposes of undertaking required maintenance and bill the property owner or lessee for the costs incurred.

Section 1-14.16. - Variances.

- A. *Application.* An application for waivers to the standards of this ordinance shall be filed with and heard by the Planning and Zoning Board who shall recommend appropriate action to the Town Council. The Town Council shall render the final action. The said application shall:
1. Be filed on forms provided by the Town Clerk.
 2. State clearly and in detail the waivers requested and reasons therefor.
 3. Be accompanied by sketches, surveys and statistical information.
 4. Be accompanied by an application fee, the amount of which shall be determined by the resolution of the Town Council.
 5. Be executed and sworn to by the owner or authorized agent.
- B. *Criteria for Approval.* The Town Council after considering the recommendation of the Planning and Zoning Board may approve or grant said variance only if it determines that said waivers are not contrary to the intent of this ordinance and that a literal enforcement of the standards of this ordinance would be impracticable and would result in an unreasonable and unnecessary hardship.

Malabar Land Development Code

Article XV

Tree Protection

Article XV - TREE PROTECTION AND RESTORATION^[1]

Footnotes:

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Editor's note— Ord. No. 03-17, § 1, adopted January 5, 2004, repealed the former Art. XV, §§ 1-15.1—1-15.14, and enacted a new Art. XV as set out herein. The former Art. XV pertained to similar subject matter and derived from Ord. No. 90-5, 4-17-90; Ord. No. 90-7, § 2, 11-7-90.

Section 1-15.1. - Short title.

This ordinance shall be known and may be cited as the Town of Malabar Tree Protection and Restoration Ordinance.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.2. - Authority and power.

Pursuant to the Constitution of the State of Florida and Chapter 163 of the Florida Statutes the Town of Malabar Town Council is vested with the authority to adopt the Town of Malabar Tree Protection and Restoration Ordinance to be administered by the Town Administrator, or his or her designee.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.3. - Purpose and intent.

It is the intent of this ordinance to promote the health, safety and general welfare of the current and future residents of the Town of Malabar by establishing minimum standards for the regulation of the planting, maintenance, preservation, protection and removal of trees within the Town of Malabar. It is further intended to perpetuate adequate tree numbers and canopy in order to maintain the economic, environmental and aesthetic status of the Town. To this end, it shall be unlawful to cut down, damage, poison or in any other manner destroy or cause to be destroyed and tree, mangrove, or other vegetation as covered by the provisions of this Ordinance except in accordance with the provisions set forth herein.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.4. - Beautification trust fund.

A beautification trust fund is hereby established for the purpose of accruing revenues generated by the receipt of monies collected as application fees and the equivalent values as prescribed herein, and for the expenditure of such funds for the purpose of establishing beautification projects on public lands. All projects will be approved by the Town Council.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.5. - Definitions.

For the purpose of this article, the following terms shall have those meanings set forth herein.

- a. *Bond* shall mean a cashiers check payable to the Town of Malabar in an amount equal to the equivalent replacement value of the tree(s) to be removed an or relocated and given as guarantee of replacement by the applicant.
- b. *Branch collar* shall mean the trunk tissue that forms around the base of a branch between the main trunk and the branch.
- c. *Caliper* shall mean the diameter of a tree measured four and one-half (4½) feet above the ground, rounded to the nearest one-half (½) inch.
- d. *Canopy* shall mean the upper portion of a tree, consisting of limbs, branches and leaves.
- e. *Conifer* shall mean a pine tree or cone bearing seed plant.
- f. *Diameter at breast height (DBH)*. The standard measure of a single stemmed tree at four and one-half (4½) feet above grade adjacent to tree. When a tree has grown with cluster stems at breast height, DBH shall be equal to the sum or aggregate of the individual stems measured at four and one-half (4½) feet above grade.
- g. *Drip line* shall mean the natural outside end of the branches of a tree or shrub projected vertically to the ground.
- h. *Grubbing* shall mean the removal or destruction of any living rooted shrubbery; denuding of a parcel by digging, raking, or dragging; activities which disturb the roots of such vegetation or the soil in which such roots are located in a manner which is calculated to result or likely to result, in the death, destruction or removal of such vegetation.
- i. *Land clearing* shall mean the removal or grubbing, by any means, of any type of vegetation from land not including, however, activities governed by tree removal or mangrove alteration permits.
- j. *Mangrove*. Rooted shall mean rooted trees and seedlings of the following species, but only when having a coastal or estuarine association:
 - i. Red Mangrove—Rhizophora Mangle;
 - ii. Black Mangrove—Avicennia Germinans;
 - iii. White Mangrove—Laguncularia Racemosa;
 - iv. Buttonwood or Button Mangrove—Conocarpus Erecta
- k. *Protected area* shall mean an area surrounding a protected, historic, or tree of special significance within which physical intrusion is prohibited in order to prevent damage to the tree, roots and soil around the tree base, the dimensions of which shall be established by the Town and set forth in the tree removal permit, in accordance with section.
- l. *Protected tree* shall mean all trees and all significant grouping of trees of the West Indian or Tropical origin of any size and all mangrove regardless of size; excluding, however, the following trees and plants, regardless of size or location:
 - i. Australian Pine—Casuarina Cunninghamiana; Casuarina Lepidophlia; Casuarina Equisetifolia;
 - ii. Ear Pod Tree—Enterolobium Cyclocarpum
 - iii. China Berry—Melia Azedarach
 - iv. Brazilian Pepper Tree—Schinus Terebinthifolius
 - v. Melaleuca, Punk or Paper Tree—Melaleuca Leucadendron
 - vi. Chinese Tallow Tree—Sapium Sebiferum
 - vii. Air Potatoe—Dioscorea-bulbifera, Dioscorea alata
 - viii. Kudzu Vine—Pueraria Montana

- ix. Climbing Fern—*Lygodium Japonicum*, *Lygodium microphyllum*
 - x. African Bowstring Hemp—*Sause Viera Hyacinthoides*
 - xi. Castor Bean Plant—*Racinus Communis*
 - xii. Any species found on the Florida Exotic Pest Plant Council's list of Florida's most Invasive Species.
- m. *Cabbage Palms*(*Sable Palmetto*) and *Citrus Trees* of all varieties shall not be considered to be protected trees, but such trees shall be included in the tree survey in the event the applicant chooses to make use of such trees as a credit against the trees otherwise required under an applicable landscaping regulation or requirement. If so designated, these Palms and Citrus shall become protected trees under this ordinance.
 - n. *Protective barrier* shall be made of one-inch to two-inch wide stakes spaced a minimum of five (5) to eight (8) feet and eighteen (18) inches to twenty-four (24) inches above ground with the top two-inch to four-inch marked by fluorescent orange paint or tape.
 - o. *Remove* or *removal* shall mean the actual physical removal or the effect of removal through damaging, poisoning or other direct or indirect action in resulting in or likely to result in the death of a tree.
 - p. *Tree survey* shall mean a physical on-site survey and plot of trees.
 - q. *Trees of special significance* shall mean a tree which is determined by the Town Council to be a value to the community because of its type, size, age or other significant tree characteristics.
 - r. *Historic tree* shall mean a tree which has been found by the Town Council to be of notable historic interest to the Town based on its age, species, size, or historic association with the Town.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.6. - General prohibitions.

Unless expressly exempted herein, it shall be unlawful and subject to the penalties provided herein for any person directly or indirectly by another on his behalf to:

1. Remove, relocate, destroy or damage, any tree on any site or tract without first obtaining a tree removal permit or mangrove alteration permit pursuant to this ordinance;
2. Perform any land clearing or grubbing unless a land clearing permit has been issued pursuant to this ordinance;
3. Encroach on to protected areas established pursuant to this ordinance by any of the following acts or omissions:
 - a. Trenching, digging, movement or storage of any vehicle within or across a protected area;
 - b. The storage of building materials, debris, fill, soil or any other matter within a protected area;
 - c. The cleaning of material or equipment within a protected area;
 - d. The disposal of any liquid or solid waste material such as paints, oil, solvents, asphalt, concrete, mortar, or other materials similarly harmful within a protected area; and
 - e. The placement of any structure or site improvement within a protected area.
4. Violate or fail to observe any of the requirements set forth in section 1-15.6 of this ordinance pertaining to tree and mangrove protection.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.7. - Limited exemptions.

- A. *Existing bona fide agricultural operations and nurseries.* The intent of this ordinance is not to prohibit a reasonable expansion of an existing bona fide agricultural activity. Accordingly, an existing agricultural activity operating in the Town of Malabar with a state agricultural tax exemption together with a Town business license for a five-year duration shall be allowed to expand operations. However, the applicant for such an expansion shall first present the Building Official with a plan as described in section 1-15.8(B)(1).

The plan shall demonstrate to the satisfaction of the Building Official that the requested land clearing and tree removal impacts the minimum tree removal necessary to accommodate a reasonable expansion of an existing agricultural activity and that a failure to allow such tree removal would be unreasonable and would severely restrict or prohibit such reasonable expansion activity.

The Building Official shall have authority to approve such a plan for tree removal and shall order a tree removal permit upon the applicant's compliance with the terms of this subsection.

In addition, all licensed plant and/or tree nurseries shall be exempt from the terms and provisions of this article as it may impact trees and plants growing on the premises and intended for commercial sale in the licensee's ordinary course of business.

- B. *Other activities.* Notwithstanding anything to the contrary in this ordinance, the following activities shall be lawful without application for or issuance of a tree removal or land clearing permit. None of these exemptions shall apply to any mangrove; nor shall they apply to dune vegetation. Burden of proving entitlement to any particular exemption shall lie with the person claiming use of the exemption, in the event the exempted activity ever becomes subject to an enforcement proceeding.
1. *Limited pruning (excluding mangroves).* The limited pruning and trimming of any tree or other vegetation as necessary for the clearing of a path not to exceed four (4) feet in width to provide physical access or view necessary to conduct a survey or site examination for the preparation of subdivision plats, site plans, or tree surveys, provided such clearing or removal is conducted under the direction of a Florida registered surveyor or engineer.
 2. *Restricted landscape maintenance.* Routine landscape maintenance such as trimming or pruning of vegetation which is not intended to result in the eventual death of a plant, mowing of yards or lawns, or any other landscaping or gardening activity which is commonly recognized as routine maintenance or replacement.
 3. *Work by utility service.* The removal, trimming, pruning or alteration of any tree or vegetation in an existing utility easement or right-of-way provided such work is done by or under the control of the operating utility company and said company has received all necessary licenses or permits to provide utility service within the easement.
 4. *Minor alteration to preserve existing access.* The removal, pruning, trimming or alteration of any tree or vegetation for the purpose of maintaining an existing access to a property with minimum necessary alteration to natural vegetation.
- C. *Damaged trees.* Any tree which has been destroyed or damaged beyond saving by natural cause or causes not covered by other sections of this ordinance, or which constitutes an immediate peril to life, property, or other trees, may be removed by obtaining a Type IV permit issued at no cost to the applicant.
- (d) *Pruning or removal of trees and foliage.* Where any portion of the canopy is within thirty (30) feet of any structure located on property that may be endangered by the possibility of fire or physical damage or destruction by wind or rain, said vegetation with a six inch basal diameter or less may be pruned or removed without a permit. Trees and foliage meeting these criteria with greater than a six-inch basal diameter may be pruned or removed upon the issuance of a Type IV permit from the Building Official. Additionally, trees or vegetation, where the canopy is greater than thirty (30) feet from any structure located on property, may be pruned without a permit or removed upon the issuance of a Type IV permit

from the Building Official if the canopy height is equal to or greater than the distance from the canopy to the structure. Non-Native trees and foliage species as well as dead trees and foliage with less than a six-inch basal diameter may be removed without permit and those with a greater than six-inch basal diameter may be removed upon the issuance of a Type IV permit from the Building Official.

(Ord. No. 08-08, § 1, 10-20-08)

Section 1-15.8. - Permits available; criteria for issuing permits; permit determinations; required replacements or relocations.

- A. *Permits available.* The following permits with stated limitations shall be available upon proper application to the Building Official and compliance with this ordinance.
1. *Tree removal permit:* A tree removal permit shall not authorize the destruction of a mangrove unless criteria governing mangrove alteration is satisfied.
 2. *Land clearing permit:* A land clearing permit does not authorize the removal or destruction of protected trees, nor does it authorize any alteration to a mangrove.
 3. *Mangrove alteration permit:* No mangrove shall be altered unless the Building Official has issued appropriate permits based on a determination that all criteria governing both tree removal and mangrove alteration permits have been satisfied.
- B. *Criteria for issuing permits.* The following criteria shall be satisfied prior to issuance of a tree removal, mangrove alteration, or land clearing permit, respectively.
1. *Criteria for issuing a tree removal permit.* In determining whether or not a permit required by this ordinance should be issued, the Building Official shall consider the following criteria:
 - a. The condition of the tree with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures and interference with utilities services;
 - b. The necessity of removing a tree to construct proposed improvements in order to allow reasonable economic use of the property;
 - c. The topography of the land where the tree is located and the effect removal of the same would have on: erosion, soil moisture retention, increased or decreased flow or diversion in the flow of surface waters, and impact on overall surface water, management;
 - d. The number and density of trees existing on site;
 - e. The relative significance or uniqueness of the tree as a historic or specimen tree;
 - f. Impact on the natural environment, including: ground and surface water stabilization, water quality and aquifer recharge, ecological impacts, noise buffer, air quality, and wild life habitat;
 - g. The ease with which the applicant can alter or revise the proposed development or improvement in order to accommodate existing mangrove or trees; and
 - h. The economic hardship which would be imposed upon the applicant should the permit not be granted.
 2. *Criteria for issuing a mangrove alteration permit.* In determining whether or not to issue a permit, as required by this ordinance to alter a mangrove, the Building Official shall consider not only tree removal criteria of subparagraph B(1) of this section, but shall also consider the following criteria and incorporate them as conditions of the permit if issued. A violation of any of these provisions shall be deemed to be unlawful and subject to all penalties provided for herein.
 - a. At least fifty (50) percent of the original canopy of any mangrove trees shall be continuously retained.

- b. White mangroves and buttonwood shall not be trimmed at all at a distance less than two (2) feet above the natural ground elevation. All resultant sprout re-growth shall be allowed to attain a height of a minimum of three (3) feet above natural ground elevation.
 - c. On red mangroves, no prop roots shall be damaged, removed or buried by fill or other means.
 - d. Red mangroves may be hedged down to a minimum height of six (6) feet, providing the limitations in subparagraphs a. and g. above [sic] are not exceeded.
 - e. On a black mangrove of ten (10) feet or less in height there shall be no cutting or trimming below the lowest two (2) living lateral limbs, unless a significant canopy area is left at the top of the tree. Further, no pneumatophores shall be damaged or removed nor shall they be buried by fill or other means.
 - f. No large mangrove cuttings shall be discarded into any estuary, marsh, river, or adjacent water course.
 - g. Pruning, removal and relocation of mangroves shall be prohibited between December 1st and February 15th.
 - h. All cuts shall be made cleanly and at the base of the branch or limb cut, except when done with respect to the shaping of a hedge.
 - i. A mangrove alteration permit shall not authorize removal of any mangrove unless the applicant replaces or relocates that number of mangroves necessary to revegetate an area approximately equal to the area destroyed, on the same development site. The applicant must provide an affirmative program satisfactory to the Building Official to assure survival of the replaced or relocated mangroves and to stabilize the shoreline from which mangroves were removed. The approved program shall be considered an express condition of the permit.
 - j. Notwithstanding the criteria of subparagraph B(2) of this section, the property owner/applicant may elect a replanting and hedging program, under direction and control of the Building Official, and under which replacement juvenile red mangroves may be hedged several times each year and maintained at a height after periodic hedging of three (3) feet. A mandatory and integral part of this program is that hedged material (clippings) shall be left atop the hedged mangroves until leaf drop from the hedged material (clippings) has occurred. The dropped leaves shall then become part of the estuary food chain.
3. *Criteria for issuing a land clearing permit.* In determining whether or not to issue a permit to clear or grub land as required by this ordinance, the Building Official shall consider whether the applicant has or is complying with all tree and land clearing provisions of this ordinance and shall base a decision regarding issuance of a permit on the following criteria:
- a. The minimum necessary vegetation removal on the property for purposes of land surveying or land preparation for development or other economic uses;
 - b. Whether visual access is necessary to comply with tree survey requirements;
 - c. Whether the applicant has provided protective barriers around all protected trees on the site or will utilize light machinery, which does not penetrate or severely compact the soil, for clearing understory vegetation in protected areas;
 - d. The impact upon natural and man-made systems including erosion and surface water management and other impacts identified in section 1-15.8. To this end the applicant shall provide a reasonable written plan for controlling erosion which may be expected to occur as a result of the proposed clearing or grubbing. The plan shall incorporate some or all of the following measures necessary to achieve soil stabilization, prevent erosion, and promote efficient surface water management, including: temporary seeding and mulching, sodding, diversion berms, interceptor ditches, sediment barriers, sediment basins, and related appurtenances or devices. All provisions of an erosion control plan shall be incorporated as express conditions of the land clearing permit issued and a violation of any of the conditions

or provisions of the plan shall be considered a violation of this ordinance, and subject to all enforcement provisions. The Building Official may require written elaboration of a proposed plan prior to issuance of a permit in order to clarify the nature and design of measures intended by the applicant.

- C. *Tree removal, mangrove alteration, and land clearing permit determinations.* The Building Official shall only issue a tree removal, mangrove alteration or land clearing permit upon a finding that all applicable requirements of this ordinance have been satisfied including criteria for issuance as set forth in section 1-15.8(B) as well as provisions governing required replacements in section 1-15.8(D). Notwithstanding, no permit shall be granted if the Building Official determines that any one of the following conditions exists:
1. *Ability to reasonably shift location of proposed improvements.* That the applicant can reasonably shift the location of the structure, building or improvement which he wishes to construct on the site, while maintaining the existence of the subject trees or mangroves and still permitting the construction of such building or improvement on the site;
 2. *Ability to reasonably modify design concept.* That the applicant can reasonably modify the design of a structure, building or other proposed improvement while maintaining the existence of the trees or mangroves proposed to be removed and still permit construction of a substantially similar building on the site; or
 3. *Land clearing or removal generates substantial adverse impact.* That the land clearing or the removal of the subject trees or mangroves will have a substantial adverse impact on the urban and natural environment.
- D. *Required replacement or relocation of trees.* All trees that are removed or destroyed shall be replaced by a species of protected trees to be approved by the Town Council and to be kept on file in the Office of the Town Clerk. The cost of replacing trees shall be incurred by the applicant/developer. The specifications regulating the replacement of trees are cited below:
1. *Characteristics of replacement trees.* The replacement tree(s) shall have at least equal shade potential screening properties; and/or other characteristics comparable to that of the trees(s) requested to be removed.
 2. *Size of replacement trees.* Replacement tree(s) are to be made according to a standard of one (1) inch diameter at breast height (DBH) total replacement for each one (1) inch DBH removed, unless otherwise agreed upon by both the Building Official and applicant. Any number of trees may be utilized to meet the inch-for-inch requirement provided acceptable spacings and design are maintained.
 3. *Tree species.* Relocated or replacement trees shall include only species defined as protected trees under this ordinance.
 4. *Minimum standards for replacement trees.* All replacement tree(s) must have a minimum overall planted height of eight (8) feet at the time of planting and a Florida Department of Agriculture Nursery Grade Standard (quality) of No. 1 or better.
 5. *Transplanting and maintenance requirements.* All trees transplanted pursuant to this ordinance shall be maintained in a healthy, living condition. Any such trees which die shall be replaced by the applicant. The Building Official shall retain jurisdiction to insure compliance with this section.
 6. *Waivers of replacement tree(s) specifications.* The Building Official may waive the size or minimum standards specifications if the applicant can demonstrate that the current market conditions are such that replacement tree(s) meeting these specifications are not readily available. Similarly the number of required replacements may be waived by the Building Official if the Building Official determines that the remaining number of trees to be preserved on site are of sufficient number and quality to substantially comply with the purpose and intent of the tree protection ordinance. Substitute tree(s) allowed under this waiver provision must have the approval of the Building Official.

- E. *Classification of permits:* Each applicant for a permit, as set forth below, shall conform with the procedures that are applicable to that particular type of permit:
1. Type I permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with any development plan required by the Land Development Code.
 2. Type II permits shall be required for the removal of trees five (5) inches dbh and larger in conjunction with issuance of any right-of-way use or any driveway connection permit pursuant of the Land Development Code.
 3. Type III permits shall be required for the removal of any tree five (5) inches dbh and larger in conjunction with the application and issuance of a building permit that was not, as a part of a related development permit, reviewed for tree removal and/or replacement.
 4. Type IV permits shall be required for the removal of any tree where a Type I, II, or III permit is not required and the tree is ten (10) inches dbh and larger (five (5) inches dbh and larger for non single-family).

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.9. - Submittal requirements, review and determination.

A. *Type I permit.*

1. *Submittal:* Projects which require a Type I permit shall submit the following to the Town Administrator, or his designee, concurrent with the submittal of a development plan as required by the Land Development Code:
 - a. Tree location survey identifying tree(s) ten (10) inches dbh and larger and all trees two (2) inches dbh and larger.
 - b. Tree plan prepared or approved by a registered landscape architect as authorized by Florida Statutes Chapter 481, as amended, or other type pf professional as approved by the Town Administrator or his designee.
2. *Review and determination process:* The review and determination process shall be concurrent with the applicable development plan process.

B. *Type II permit.*

1. *Submittal:* Projects which require a Type II permit shall submit the following to the Town Administrator, or his designee, concurrent with the submittal of a right-of-way use or driveway connection permit application:
 - a. A sketch identifying the location and general description of tree(s) five (5) inches dbh and larger. For projects larger than one single-family dwelling, a Tree Location Survey identifying tree(s) five (5) inches dbh and larger shall be submitted.
2. *Review and determination process:* The review and determination process shall be concurrent with the review process.

C. *Type III permit.*

1. *Submittal:* Projects that require a Type III permit shall submit the following to the Town Administrator or his designee, concurrent with the submittal of a building permit application:
 - a. A sketch showing location and a general description of tree(s) five (5) inches dbh and larger.
2. *Review and determination process:* The review and determination process shall be concurrent with the review of the building permit application. Reasonable effort shall be made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree proposed for removal is ten (10) inches dbh and larger.

After reasonable effort is made to minimize tree removal and the location of the tree prohibits the use of the site for the intended and desired purpose, a tree removal permit may be granted.

D. *Type IV permit.*

1. *Submittal:* Tree removal requiring a Type IV permit shall submit two copies of the following to the Town Administrator, or his designee:
 - a. Permit application demonstrating compliance with one (1) or more of the criteria below.
 - b. A sketch showing location and a general description of tree(s) ten (10) inches dbh and larger (five (5) inches dbh and larger for non single-family).
 - c. Tree plan if applicable.
2. *Review and determination process:* The tree removal permit shall only be granted where at least one of the following criteria is met:
 - a. *Use.* Reasonable effort has been made to minimize tree removal such as design modification and requests for variances, e.g., variances in lot width or set back requirements, where the tree(s) proposed for removal is ten (10) inches dbh and larger, however, the location of the tree(s) prohibits the use of the site for the intended and desired purpose.
 - b. *Proximity to structures.* The tree or its root system is determined to be detrimental to the integrity of the structure's foundation.
 - c. *Thinning.* The removal of such tree is beneficial to the enhanced growth of other trees on site.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.10. - Application procedure and fees.

- A. *Required application.* Application for issuance of any permit required by this ordinance shall be made in writing to the Town Building Official on a form provided by the Town. The form shall request all information necessary to evaluate a particular application including, but not limited to:
1. Statement as to the applicant's interest in the property and reasonable proof of ownership.
 2. Legal description of the property and a boundary survey or accurate scaled drawing thereof:
 3. A tree survey indicating all trees and including those trees that are intended for removal, relocation, or alteration in any way and those which will be left undisturbed. A written explanation shall be included with the tree survey which identifies those criteria in section 1-15.8 of this ordinance which justify issuance of the requested permit.
 4. If land clearing is intended, an erosion control plan as described in section 1-15.8(B)(3), together with reasons for clearing or grubbing of the site.
 5. The application shall be submitted and processed concurrently with site plan review or subdivision approval, as the case may be, when such approvals are otherwise required to make use of the property. The site plan or subdivision preliminary plat shall be prepared in a manner to allow ready comparison with the tree survey, to assess whether the cited criteria have been met. All items shown shall be properly dimensioned, scaled and referenced to the property lines, easements, and setback or yard requirements. If known, existing and proposed site elevations and major contours shall be included:
 6. An administrative fee to offset the cost of evaluating the application shall be collected in an amount determined by resolution of the Town Council and a copy of the Florida Tree Protection Manual for builders and developers will be issued to each applicant for use as a guide to development.

- B. *Building official's authority to inspect.* The filing of an application shall be deemed to extend permission to the Building Official to inspect the subject property if necessary for purpose of evaluating the application.
- C. *Permit expiration.* Any permit issued hereunder shall remain valid for a term of six (6) months and may be renewed for a second six-month period upon request to the Building Official. The Building Official may require reapplication and full review in those renewal cases where site conditions have changed substantially from the date of issuance of the initial permit as a result of natural growth of trees and vegetation, or high winds, hurricane, tornado, flooding, fire, or other act of God. If a permit required by this ordinance has been issued concurrently with site plan or subdivision approval, then such permit shall run concurrently with the site plan or subdivision approval and shall be renewed together therewith.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.11. - Tree protection during development of land.

- A. For the purposes of Type I and II permits, prior to the clearing or grubbing of land, or the removal of any tree, the applicant shall clearly mark all tree(s) for which tree(s) removal permit(s) are granted and shall erect barriers around the tree(s) to be retained on site so as to create a protected zone.
 - 1. The protected zone shall extend from the tree trunk in all directions a minimum of two-thirds ($\frac{2}{3}$) of that tree's drip line.
 - 2. Barriers of a minimum of three (3) feet in height shall be erected outside the protected zone to prevent encroachment. Barriers shall remain in place and be in good condition throughout all development and building activity.
 - 3. For large property areas containing stands of trees to be retained that are separated from grubbing, clearing, and construction, in lieu of placing barriers as described above, may be partitioned off by placing the barriers around the perimeter of the stand area on the sides where grubbing, clearing or construction, etc., is occurring as long as an equivalent protected zone is established.
 - 4. The applicant, owner, developer, builder or agent shall not cause or permit the movement of equipment or the storage of equipment, material, and debris or fill to be placed within the protected zone. No excavation shall occur within the protected zone and there shall be no cleaning of equipment or material or the storage or disposal of waste materials such as paints, petroleum products, oils, solvents, asphalts, concrete, mortar, or any other material within the protected zone. There shall be no fire or burning within thirty (30) feet of the protected zone.
 - 5. Protective barriers may be removed for the final grading. Removal of vegetation or any landscaping activities within the barrier area shall be accomplished by mowing or hand clearing. If landscaping is to be located within the protected zone, clearing by light rubber-wheeled machinery only in the area and to the extent necessary shall be allowed.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.12. - Trees of special significance.

- A. *Designation.* Trees of special significance are those trees or grouping of trees designated as such by a resolution of the Town Council. Designations can only be initiated by the property owner(s) of such tree(s) or on Town owned property by Town staff. After initiated, designation shall be reviewed by Town staff and those trees meeting the requirements of this section shall be presented to the Town Council who shall decide whether to designate a tree(s) as a tree of special significance. Trees designated as trees of special significance shall have a preservation easement, prepared by the owner(s) of the tree(s), created around them extending a minimum of fifteen (15) feet in all directions

from the trunk and such preservation easement shall be recorded, by the owner(s) of the tree(s), in the public records of the Town of Malabar. Trees may be so designated if one of the following criteria applies:

1. It is a historic tree, which is a tree of notable historical interest and value to the Town because of its location or historical association with the community.
 2. It is a specimen or grand tree, which is a tree of high value to the community because of its type, size, age, exceptional characteristics or other relevant criteria. See Schedule A and B.
 3. It is a champion tree, which is a tree that has been identified by the Florida Division of Forestry as being the largest of its species within the State of Florida or by the American Forestry Association as being the largest of its species in the United States or the world.
- B. *Protection.* A variance of the required minimum front, rear, and side yard setbacks may be granted to allow the preservation of trees of special significance. Topping of trees of special significance shall be subject to all penalties and fines as provided by this ordinance. The removal of any designated tree of special significance requires; a Type IV permit; a site inspection and written evaluation by a certified arborist demonstrating that removal is deemed necessary to avoid an immediate peril to life and/or the condition of the tree warrants removal; removal is approved by the Town Council; and the replacement shall be as determined by the Town Council.

Schedule A
Species and Minimum Points Needed to be a Grand Tree

American Elm (<i>Ulmus Americana</i>)	100
Bald Cypress (<i>Taxodium distichum</i>)	120
Hickory (<i>Carya spp.</i>)	110
Live Oak (<i>Quercus virginiana</i>)	110
Pine (<i>Pinus spp.</i>)	110
Redbay (<i>Persea borbonia</i>)	85
Sand Live Oak (<i>Quercus geminate</i>)	70
Southern Magnolia (<i>Magnolia grandiflora</i>)	80
Southern Red Cedar (<i>Juniperus silicicola</i>)	90
Sugarberry (<i>Celtis laevigata</i>)	95
Sweetbay (<i>Magnolia virginiana</i>)	90
Sweetgum (<i>Liquidambar styraciflua</i>)	100

Schedule B
Measurements

Trunk diameter (DBH)	one point per inch
Height to the nearest foot	one point per foot
Average canopy spread to the nearest foot	one point for each four foot
(measure the longest and shortest diameters of the limb spread or drip line and divide by 2)	

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.13. - Variance.

In so much as the requirements of this ordinance have been determined to be of vital importance to the health, safety and well being of the community, the desire to preserve a protected tree, whether mandated by this ordinance or not, shall be considered prima fascia a unique or special condition or circumstance peculiar to the land involved for the purpose of application for a variance from the literal requirements of a Land Development Ordinance, or Regulation pertaining to building setbacks, parking space requirements or road right-of-way widths, provided adjustments are made elsewhere on site to preserve the maximum permitted lot coverage and the total minimum number of parking spaces, and provided safety precautions are taken to offset any hazards resulting from the trees to right-of-way widths.

Such variance requests shall be made in accordance with the procedures in section 1-12.2.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.14. - Emergency tree removal.

When it is necessary to expedite the removal of damaged or destroyed trees in the interest of public safety, health and general welfare following high winds, storms, hurricanes, tornadoes, floods, freezes, fires or other man-made or natural disasters, Building Official may issue a type IV permit for the removal of such damaged tree and the applicant shall not be required to pay a permit fee.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.15. - Penalties and enforcement-special hearing master jurisdiction.

Penalties for violations of this article, including conditions of any permit issued hereunder, shall include a fine of up to five hundred dollars (\$500.00) per tree illegally removed. In addition, any violation of this article, or any permit issued hereunder, shall also be punishable by a fine of not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or both such fine and imprisonment. Each unauthorized removal of a tree protected by this article shall be deemed a separate offense.

Any person violating the provisions of this article XV is subject to the jurisdiction of the special hearing master and in any enforcement proceeding, the special hearing master may consider mitigating measures voluntarily undertaken by the alleged violator such as replacement or relocation of trees or vegetation or other landscaping improvements in fashioning its remedy. The special hearing master, in addition to the fine imposed herein shall also have the authority to require restorative measures he or she deems necessary. Such restorative measures include, but are not limited to the following:

- A. The replanting of a tree twice the size of one illegally removed of the same type;
- B. By replanting the same type trees with five-inch dbh or greater in a sufficient number such that the total number of dbh inches of the replanted trees equals twice the total number of dbh inches of trees removed without authorization;
- C. The payment of a mitigation fee of two hundred dollars (\$200.00) per diameter inch of the trees removed without authorization to the beautification trust fund.

(Ord. No. 03-17, § 1, 1-5-04)

Section 1-15.16. - Appeals.

Except for decisions of the Board of Adjustments, any person aggrieved by the Administration or interpretation of any of the terms or provisions of this article may appeal to the Town Council, which, after a hearing, with notice to the appellant may reverse, affirm or modify, in whole or in part the order, requirement, decision or determination appealed from, and they make such an order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the Administrator from whom the appeal is taken. This provision does not confer upon the Town Council any appellate jurisdiction over a determination of the Special Hearing Master or Board of Adjustments.

(Ord. No. 03-17, § 1, 1-5-04)

HOUSE BILL 1167

In 2021 Legislature

Amends F.S. 163.045 Tree removal on
residential property

1 A bill to be entitled
 2 An act relating to tree pruning, trimming, or removal
 3 on residential property; amending s. 163.045, F.S.;
 4 defining the terms "residential property" and "mobile
 5 home park"; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:
 8

9 Section 1. Present subsections (1), (2), and (3) of
 10 section 163.045, Florida Statutes, are redesignated as
 11 subsections (2), (3), and (4), respectively, and a new
 12 subsection (1) is added to that section, to read:

13 163.045 Tree pruning, trimming, or removal on residential
 14 property.—

15 → (1) As used in this section, the term:

16 (a) "Mobile home park" means a use of land in which lots
 17 or spaces are offered for rent or lease for the placement of
 18 mobile homes and in which the primary use of the park is
 19 residential.

20 (b) "Residential property" means any residential real
 21 property, manufactured or modular home, or mobile home park. The
 22 term includes a single-family dwelling, duplex, triplex,
 23 quadruplex, condominium unit, or cooperative unit.

24 Section 2. This act shall take effect July 1, 2021.

The Florida Senate

2020 Florida Statutes

<u>Title XI</u> COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS	<u>Chapter 163</u> INTERGOVERNMENTAL PROGRAMS <u>Entire Chapter</u>	<u>SECTION 045</u> Tree pruning, trimming, or removal on residential property.
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→ New #1 per HB 1167

163.045 Tree pruning, trimming, or removal on residential property. —

- 2 (X) A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property.
- 3 (X) A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.
- 4 (X) This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.

History.—s. 1, ch. 2019-155.

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