



REGULAR TOWN COUNCIL MEETING

Monday, February 1, 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 01/04/2021
Exhibit: Agenda Report Number 4a

Attachments:

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

5. ATTORNEY REPORT
6. BCSO REPORT
7. BOARD / COMMITTEE REPORTS
 - a. T&G Committee
Zig Zag Trail Update
Exhibit: Agenda Report number 7a

Attachments:

- **Agenda Report Number 7a** (Agenda_Report_Number_7a.pdf)

- b. Park & Recreation Board
 - c. Planning & Zoning Board
8. STAFF REPORTS
 - a. Manager
 - b. Clerk
 - c. Fire Chief

9. PUBLIC COMMENTS

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

Five (5) Minute Limit per Speaker

10. PUBLIC HEARINGS: 1

- a. Road Improvement Waiver Request - Right of Way known as Beekeeper Lane - Tabled from July 6, 2020 (Hayward)

Revised 01/27/2021

Exhibit: Agenda Report Number 10a

Attachments:

- **Agenda Report Number 10a** (Agenda_Report_Number_10a_Revised_01.27.2021_.pdf)

11. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING : 0

(RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

12. ACTION ITEMS

ORDINANCES: 1

RESOLUTIONS: 0

MISCELLANEOUS: 1

a. Ordinance 2021-01 Amending Table 1-19.18 of the Land Development Code, Article XIX - Signage, Section 1-19.18 entitled District Sign Regulations

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; 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 Number 12a

Attachments:

- **Agenda Report Number 12a** (Agenda_Report_Number_12a.pdf)

b. Permission for the Town Manager to negotiate and amend terms and conditions pertaining to the Exclusive Solid Waste and Recyclable Material Collection Franchise Agreement, Ordinance 2014-12

Exhibit: Agenda Report Number 12b

Attachments:

- **Agenda Report Number 12b** (Agenda_Report_Number_12b.pdf)

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

13. DISCUSSION/POSSIBLE ACTION

14. PUBLIC COMMENTS

General Items (Speaker Card Required)

15. REPORTS - MAYOR AND COUNCIL MEMBERS

16. ANNOUNCEMENTS

Two (2) Vacancies on the Trails and Greenways Committee

17. ADJOURNMENT

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

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

Contact: Debby Franklin (townclerk@townofmalabar.org 321-727-7764) | Agenda published on 01/25/2021 at 10:47 AM

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 4.a
Meeting Date: February 1, 2021

Prepared By: Richard W. Kohler, Deputy Clerk/Treasurer

SUBJECT: Consent Agenda

BACKGROUND/HISTORY:

- a. Town Council Meeting Minutes of 01/04/2021

ATTACHMENTS:

- a. Draft Minutes of 01/04/2021

ACTION OPTIONS:

Council Action on Consent Agenda

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

JANUARY 4, 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 the meeting to order at 7:30 pm. CM Acquaviva 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

LISA MORRELL

KARL BOHNE, excused

DEBBY FRANKLIN

TOWN MANAGER: (ITM)

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

For the record FD Chief Mike Foley also present.

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

4. CONSENT AGENDA:

4.a. Regular Town Council Mtg Minutes of 12/21/2020

MOTION: CM Vail / CM Rivet to approve consent agenda. CM Acquaviva referenced a typo to her name in minutes where she spoke early in meeting. Typo will be corrected. VOTE: All Ayes.

5. ATTORNEY REPORT: not present

6. BCSO REPORT: not available

7. BOARD / COMMITTEE REPORTS:

7.a. T&G Committee: Chair Drew Thompson sent an email Mayor requesting Council approval for \$5,000.00 expense for Trails and Greenways Committee for a matching grant for a zig zag trail. He will have on a future agenda for council action.

7.b. Park & Recreation Board: no one present

7.c. P&Z Board: no one present

8. STAFF REPORTS:

8.a. **Manager:** Provided update – the phone system worked fine during holiday period; she responded to four calls. CM White is asking on status on Hunter Lane paving. ITM Lisa is waiting on availability of paving vendors to provide meeting dates with the engineer to discuss the road paving engineering plans. Franklin said the project was approved in Nov 2019 and the paving was approved in April 2020. The delay has not been caused by pavers but on Town staff.

Mayor asked for summary of SAI update. ITM Lisa gave update on SAI's most current status report, sent via email before holidays and printed for them for them tonight. Next step by them is to train Town staff on the new software created as part of this master plan.

CM Scardino asked about road widening. ITM stated that there have been several projects going on at same time: intersection improvements at Corey and Weber Roads with SR514, major drainage improvements associated with those and the new subdivision entrance and drainage associated with that.

CM Acquaviva asked about the street light posts that got moved and have created dark intersections that cause accidents and asked if it can go on the north side of SR514. It is really dark. Can light post be replaced to former location. ITM Lisa will call FDOT and get back to Council on possible solutions.

CM Rivet asked about March 12, 2020 SW masterplan report. ITM Lisa has a call set up for Jan 9 with SAI and will report back to Council after that.

8.b. FD Chief Foley gave brief overview on December report. 64 EMS calls, 34 pre-plan calls and asked how that was conducted. They do that for all the businesses that provide permission.

8.c. Clerk: Nothing

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: 1

10.a. Ordinance 2020-15 – Amend Building Codes

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BUILDING CODES; AMENDING CHAPTER 6, SECTION 6-1 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR ADOPTION OF CERTAIN MODEL BUILDING AND CONSTRUCTION CODES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.a.

Ord read by title only.

Staff – she did say this was the final reading. PH opened – none. PH closed.

MOTION: CM Rivet / CM Acquaviva to adopt Ord 2020-15. Discussion: none

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

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.

Reso read by title only.

MOTION: CM Vail / CM White to extend policy til Feb 2, 2021. Discussion: CM Acquaviva asked about the face coverings. Why are we continuing to do this every month? CM White said some of the Boards were having issues and needed Council direction. CM Vail suggested going for 60 days. Motion amended to read Mar 2, 2021. **VOTE:** All Ayes. Motion carried 5 to 0 to extend policy of face coverings and/or social distancing until midnight on March 2, 2021.

MISCELLANEOUS: 1

12.b. Property Acquisition of 1675 Marie Street

Exhibit: Agenda Report No. 12.b.

Intro by ITM Lisa - for the record, the agenda report for this item referenced Council consensus at the 11/16/20 mtg and was actually done at the 11/2/2020 RTCM. That is when under the TM Report, staff got approval for the expenditure of \$1,700.00 for the market estimate. She is bringing this back to get authorization for the next step. In order to provide the due diligence, the next step is to ask permission from the property owner to conduct a visual inspection. This

has been discussed at various meetings and workshops for uses to improve stormwater, but the actual costs to bring it to a usable status is unknown at this time.

It is a 4.5-acre vacant lot with unknown inventory of "stuff" on the land. Large easement. What to do next. Lots of unknowns. Lots of development costs, unknown costs, can incorporate into SW masterplan. Contact owner and offer. Dave asked what the contaminants are. Can we doing a visual inspection before we spend more money on environmental survey. If they sell "as-is" it will then become public property and any property removed from site would have to go through the public surplus process. CM Vail offered to go with ITM Lisa to do the inspection as he has made a similar inspection before Carl died. And show her the potential of the contamination.

From that point the next step then would be for the professional environmental issues.

ITM – are you still interested in moving forward – don't want to do without due diligence. Before we get permission to

CM Scardino stated he and his company is also qualified to do the environmental study as he has the credentials to do this review. He is also a demolition expert. CM Vail said if the metal breaking costs. Dave also does underground. He will also be willing to show him. Danny said there would be environmental cleanup.

CM White asked if SAI recommends using this site. Staff will get answer.

Mayor said is this project going after. Mayor said is it worth it. CM Vail said it is environmental. Any level of filtration would improve what goes into the IRL. Right now, would be the time to make it happen. CM Rivet said there are three (3) potential benefits. Drainage, filtration, creating wild land which is the reason we all moved here. Ask if it contained in the SW master plan management plan and it is consistent with Town needs?

MOTION: CM White / CM Scardino to authorize TM to continue to the next step. CM Acquaviva asked . about the market value appraisal of the 225K in the packet. Would we get it cheaper if actual costs to clean property were considered? Yes. VOTE: All Ayes.

13. DISCUSSION/POSSIBLE ACTION: 0

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

15. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Acquaviva: After last meeting she had some questions about the action taken on the salary increase for ITM. She hasn't had the lawyer here, so she called him and asked him a few questions about the salary increase and funding source and she has received a legal opinion from the Attorney and Clerk and ITM also got it. She wanted to let Council know of her concerns. Mayor asked if she looking to overturn that. She had question about the contract and the funding source and should it be switched and taken from the general fund instead. Mayor said Roberts Rules was followed and our Charter was followed, and the vote was approved to . That is his opinion. CM Scardino asked how much it costs to call the lawyer. CM Acquaviva said the problem is he is not coming to the meetings. We as a Council have to know what we are doing 100% of the time, but she has those questions. If that is something that we have to do to have more information. She can't speak for the Attorney, but he stated we need more information or a change in funding source.

CM Vail: Happy New Year to all.

CM Rivet: Would like to bring up issue with the needed engineering projects and only the one engineer available. We have many varied projects that have slipped in scheduling because we are waiting on engineering. Would we want to look at alternative or additional engineers' services? ITM Lisa said we are supposed to get one day per week and communication is hard. When Council approved Singhofen contract for SW master plan, they also approved utilizing the other secondary engineering firms for other various other projects. ITM Lisa will

get some information on costs and availability from Singhofen and the other engineering firms to assist with the various projects we need action on. CM Rivet stated we need this for a future agenda. ITM Lisa will get this info and bring back before Council.

CM White: he is amazed at what we are willing to spend money on and what we aren't referencing the discussion held on the cost share for road paving that went from 50% to 15% and settling on 40% ultimately. On Hunter Lane paving we worked hard and got it up to 12K for cost share and then at last meeting voted to spend 12K. Mayor had asked him to speak to SCLC update at last meeting and wasn't really prepared so has more info now. On Jan 7, at 4 pm. the Brevard Legislative Delegation that includes our State Senator and State Representatives will determine what issues in the upcoming session they want to support or submit. There is information on the SCLC website. The top five the Brevard County Legislative Delegation are discussing: 1) sales tax 2) Short term rentals 3) discharge into surface waters. Major municipalities that dump when they have too. What they are talking about tonight fits into this. 4) affordable housing. 5) Sen Joe Grudgers, SB 334 regarding legislation on prohibiting smoking in public places. He sees no problem with it. Regarding drainage – we live on flat land and the ditches are linear retention ponds.

CM Scardino: nothing

Mayor: next meeting for the Council will be January 19, 2021. Franklin said we tentatively had planned to have WM and the sign ordinance on for action but at this time, don't know if Attorney will be present. ITM Lisa said we had also moved the tabled Beekeeper Road Waiver issue to the February meeting to have Attorney present.

CM Acquaviva asked if the follow-up letters have gone out to the mobile food vendors yet? Franklin said no but one property owner had already come in and submitted documents to comply. ITM Lisa said that the notifications were not sent out before the holiday break and will now be sent out this week as staff will be in office to respond.

16. ANNOUNCEMENTS: Openings on T&G Committee.

17. ADJOURNMENT: There being no further business to discuss and without objection, the meeting was adjourned at 8:35 P.M.

BY: _____

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 02/01/2021

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 7.a
Meeting Date: February 1, 2021

Prepared By: Richard W. Kohler, Deputy Clerk/Treasurer

SUBJECT: Zig Zag Trail Update

BACKGROUND/HISTORY:

At the January 11th Trails and Greenways Committee meeting, the Committee made the following prioritized list of seven (7) projects they hope to accomplish:

1. Refurbishment of Sandhill Trailhead Parking Area
 2. Zig Zag Trail PD&E
 3. Completion of Eagles Nest Trailhead (South Marie Street)
 4. Signage for Kiosks
 5. Space Coast TPO Projects #1 and #7
 6. Briar Creek Trailhead Refurbishment
 7. Completion of Swallow-Tailed Kite Trailhead (North Corey Road)
-
1. Item #1 has already been completed by the Town of Malabar's Public Works Department.
 2. Item #2 is a Zig Zag style A.D.A. accessible path connecting the end of North Corey Road to the Al Tuttle Boundary Canal Trail. This project will require professional engineering. The Trails and Greenways Committee has approached multiple engineers for a quote on a Planning Development and Engineering (PD&E) study on the project. Upon receipt of quotes, the Trails and Greenways Committee will submit them with their recommendation for approval at a future meeting.
 3. Item #3 began on January 16th with a Volunteer Trail Day. See slide show available on www.malabartrails.org

ATTACHMENTS:

Zig Zag Trail Slide Show

FINANCIAL IMPACT:

The PD&E will be paid out of the current Trails and Greenways Committee budget. (572.4930)

ACTION OPTIONS:

No Action Required

Trail Project Estimate SOW

- Goal: Get an estimated cost to perform a later PD&E type study for this trail. At this time, we need an estimate for the study. The eventual study goals would be to provide the cost for a Design/permit/build for the trail system, given the options below.
 - Trail is located on the far N end of Corey Road, within the Cameron Trail property, owned and managed by the Town of Malabar
 - Customer is the Town of Malabar
 - Main “zig zag” trail length is 1830 feet (runs predominately N-S)
 - Option to have a 540 foot connector to an existing trail shelter (runs predominately E-W)
 - Options for construction
 - 10’ wide shale/coquina road base natural surface, locally contracted / inspected
 - 10’ wide asphalt, locally contracted / inspected
 - Above 10’ wide asphalt, but federally funded via LAP
 - All options need to provide adequate surface and base to support typical brush trucks in the event of a fire in the area
 - Either no or bahia grass edge treatment



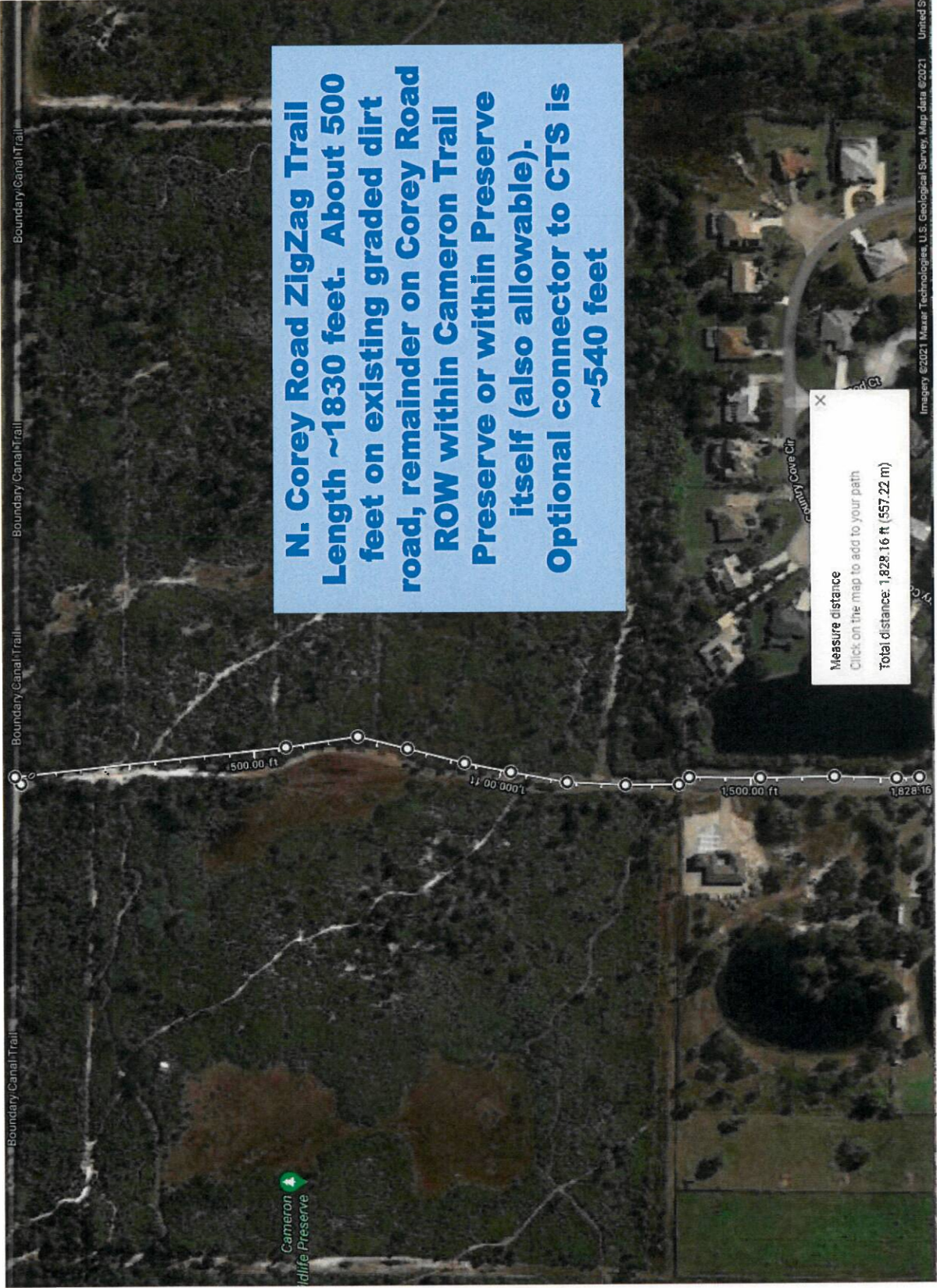
**N. Corey Road ZigZag
Paved Connector Trail
(blue),
With possible future
Connection to CTS
(yellow dashed)**

**Cameron Trail
Shelter (CTS)**

Google Earth

28°00'34.74" N 80°35'25.50" W Elev: 22 ft eye alt: 3210 ft

1994



N. Corey Road ZigZag Trail
Length ~1830 feet. About 500
feet on existing graded dirt
road, remainder on Corey Road
ROW within Cameron Trail
Preserve or within Preserve
itself (also allowable).
Optional connector to CTS is
~540 feet

Measure distance
Click on the map to add to your path
Total distance: 1,828.16 ft (557.22 m)

Boundary/Canal/Trail

Boundary/Canal/Trail

Boundary/Canal/Trail

Boundary/Canal/Trail

Cameron
Wildlife Preserve

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.a
Meeting Date: February 1, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Public Hearing on Road Improvement Waiver Request - Right of Way known as Beekeeper Lane – Tabled from July 6, 2020 (Hayward)

BACKGROUND/HISTORY:

Adam Hayward of 2735 Woodside Avenue, Winter Park, Florida, and property owner of parcel I.D. 29-37-03-00-38 with no address assigned on Beekeeper Lane is seeking a Road Improvement Waiver. Town of Malabar Comprehensive Plan, adopted in 2019, defines Beekeeper Lane as a minor collector roadway with elements with a Level of Service D designation and provide an improved 70 foot right of way, Beekeeper Lane currently is named only for the purpose of fire-fighting (effective 2007) in the rights of way accepted streets for The Town of Malabar. The Public Hearing was legally advertised to be reopened in Florida Today's January 22, 2021 edition.

ATTACHMENTS:

Applicant Request and Supporting Documentation (Revised and published 01/27/2021)
Item 10c Beekeeper from July 6, 2020 Agenda
Town Council Meeting Minutes July 6, 2020
Town Council Workshop Meeting Minutes from July 27, 2020

ACTION OPTIONS:

Applicant requests Consideration of Waiver from The Town of Malabar Road Improvement Regulations, Town of Malabar Code of Ordinances, Chapter 13, Section 13-38, Precondition to issuance of building permit – Completion of Road for Beekeeper Lane as adopted within the Town's Comprehensive Plan as a Minor Collector Road.

Reasons for Request

As noted at the previous hearing, I have been seeking a building permit for a single-family residence at my lot on Beekeeper Lane approximately 1200 ft south of Corey Rd. Because Beekeeper is not an accepted road, I am prohibited from being issued a building permit under Town Ordinance Sections 13-38 (a) and (b). I am requesting a Waiver to these sections for the following reasons:

As a minor collector, Beekeeper is required to be widened to 70' in order to be accepted by the town for maintenance, however only 2 of the 5 lots abutting the section of Right of Way in question have dedicated the land necessary to achieve this width (mine and Jones'). There are no Town Ordinances that require a permit applicant to acquire the additional land dedication necessary, the town's only method of acquiring land dedications is when a property owner applies for a building permit. For this purpose, there is a provision for an Interim Roadway to be constructed on the available Right of Way until the entire width has been dedicated to the town, at which time all lots abutting the right of way will be required to pay their portion to convert the Interim Roadway to its ultimate width. Because there is already a well-engineered and functioning roadway in place that has been used by residents of the town for over 30 years, and that any significant modification to the width of the would require additional land dedications, as well as cause damage to the resident's property on the corner of Beekeeper and Corey, I would like to request the following:

- 1.) That the town accept approximately 1660' of Beekeeper's current footprint as an Interim Roadway until appropriate dedications have been made to bring the roadway to its 70' width.**
- 2.) That the conditions of this acceptance not impede my ability to have a building permit issued in a timely manner.**

As a condition to this acceptance, I would agree to the following:

- 1.) Provide much needed maintenance on the current road, including filling dips in elevation, trimming and removing hedges in swale, improving swale drainage towards Corey rd etc. while working with the property owner on the corner (Jones) to keep the maintenance as unobtrusive as possible.**
- 2.) Create a large turnaround area on the available 55' of Right of Way where it meets my proposed driveway.**
- 3.) Enter into an agreement with the town stating that I would personally continue to keep the road maintained until the road is accepted for maintenance, at which time I would be responsible for paying my portion of the road improvement.**

4.) I would also agree to have these agreements attached to the deed of my land so that any subsequent owners would be responsible to uphold them, should the council find that condition necessary.

Regarding Beekeeper's Current Width

The portion of Beekeeper in question was already approved for maintenance by the town in 2004 under an agreement contingent on a maintenance fee paid by a previous owner of my property. That agreement was voided when the lot was sold and the fee was refunded. According to the town's recent survey it is a 12' roadway with drainage on the south and north sides that terminate at 200' and 600' east of Corey respectively, though the travel way is much wider than this in many places. In Malabar there are currently 16 accepted roads and 2 not-accepted/not-approved roads serving more than 50 homes that are 13' or less with some as narrow as 8', all without issue. Therefore, I believe improving Beekeeper beyond its current width is neither necessary for single home access nor would it serve any current public need as it is a dead-end road with no other homes nor public property. My request is consistent with the town's comprehensive plan and does not impede its objective to acquire the Right of Way dedications necessary to build the road to its standards, and also has many additional benefits including; preserving the current quality of life of the homeowner's property involved (Jones), providing free and much needed maintenance to an access road that is critical to the Fire Department's ability to protect the surrounding homes, and has no unnecessary and disproportionate impact on the environment. And finally, it does not impede my constitutional right to use my property for its intended use without undue restrictions placed on it by any authority.

Legend



600 ft



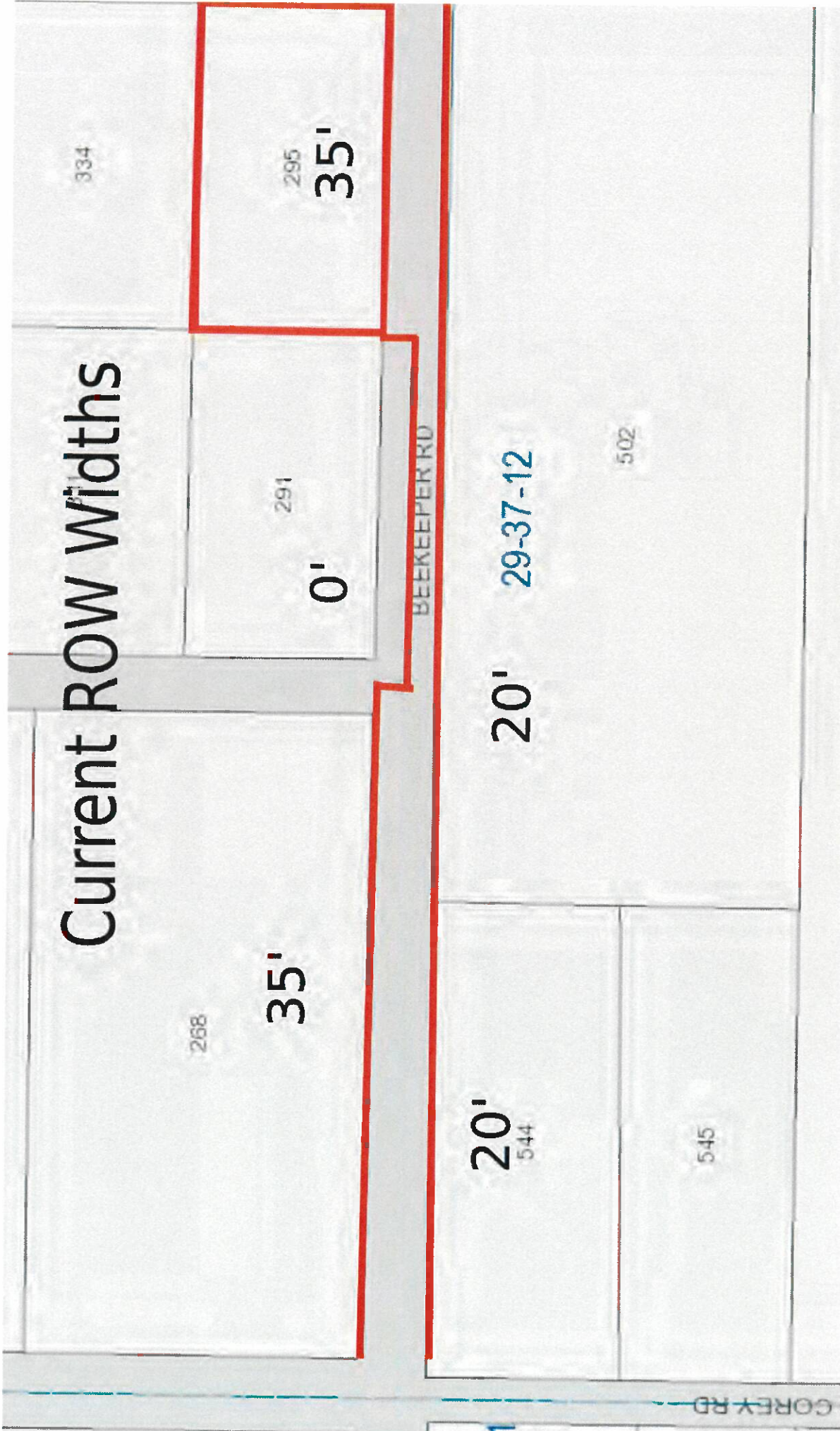
Legend



5.01 ft

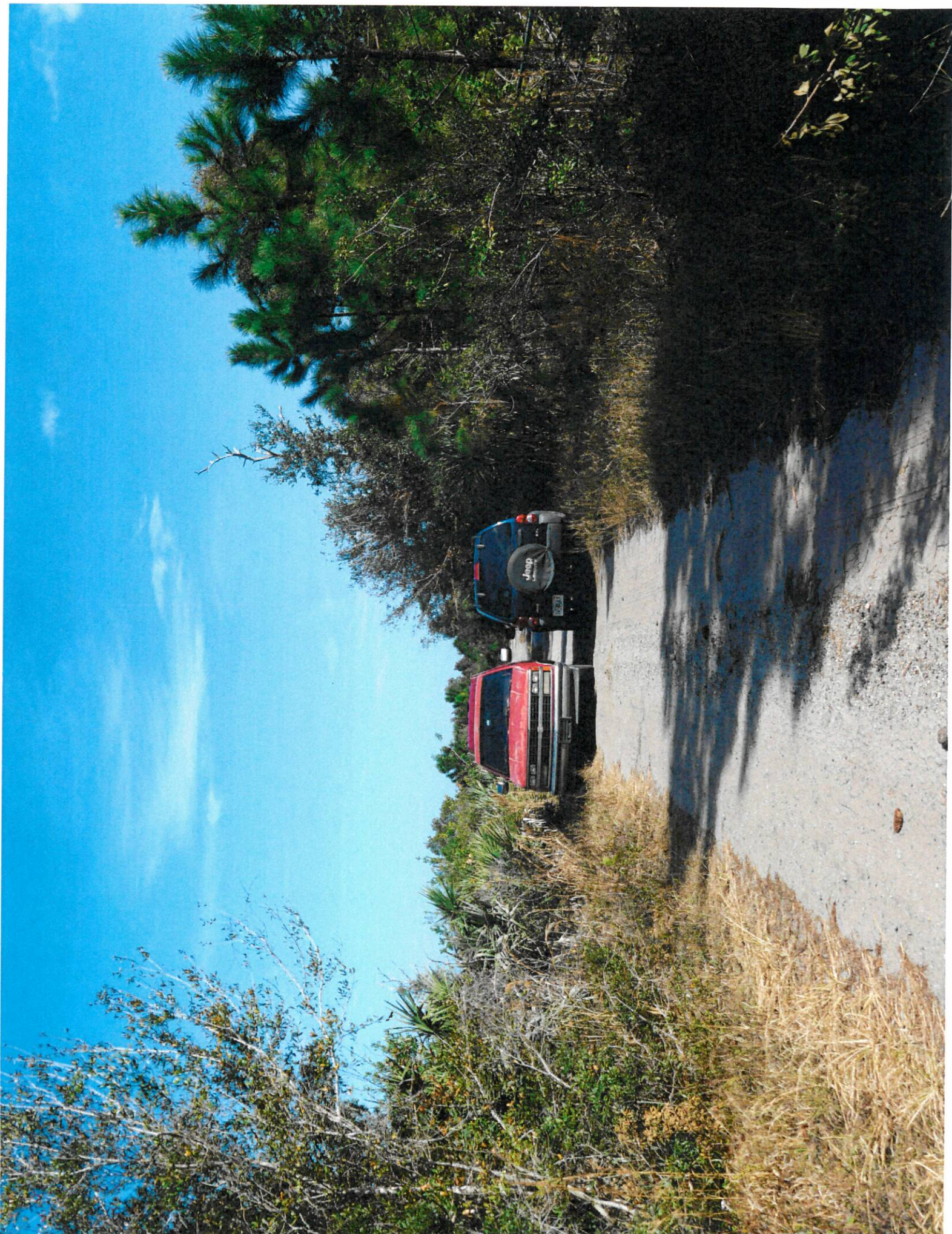
Google Earth

Current ROW Widths



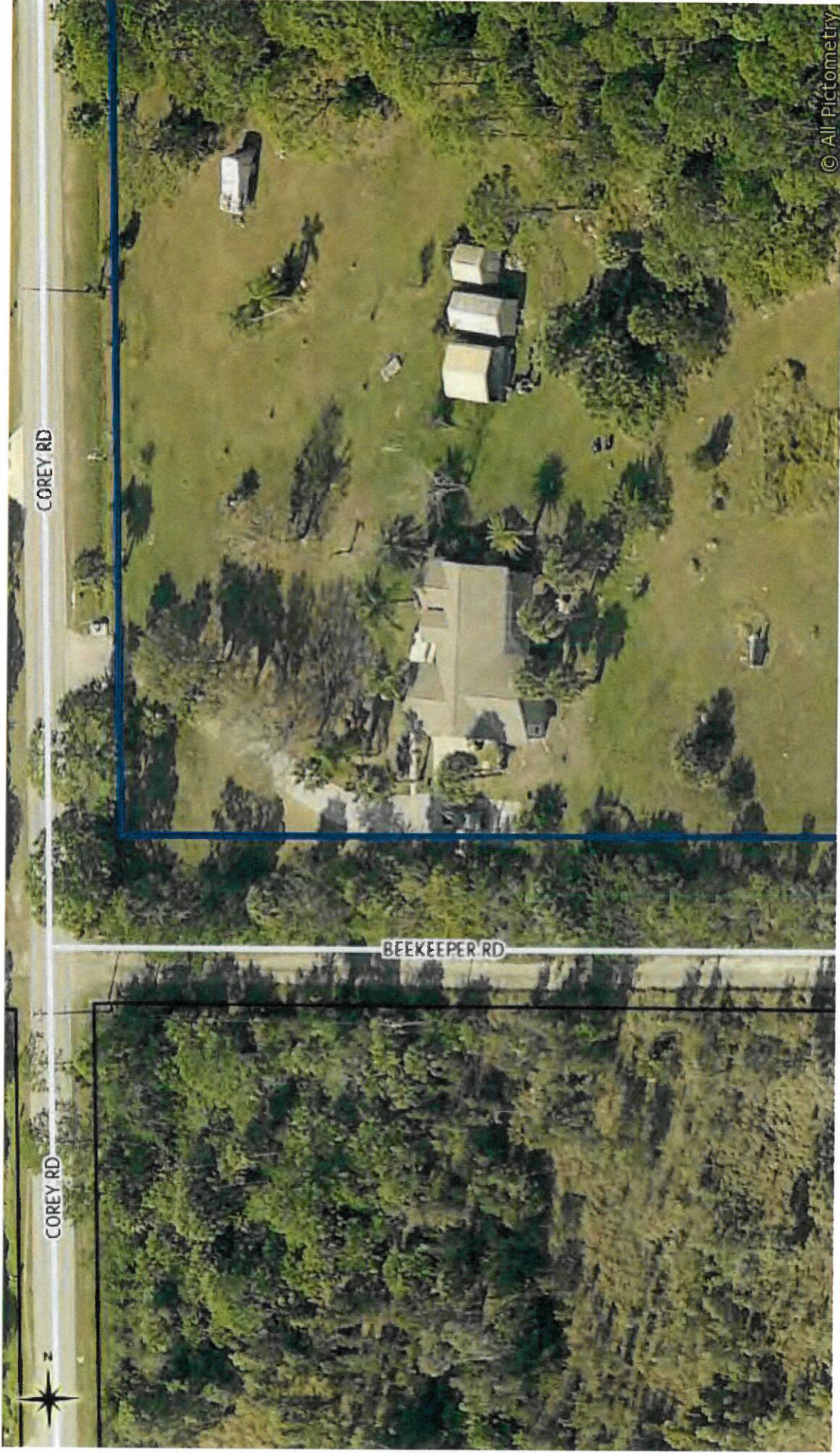








ZOOM



WARRANTY DEED

This Warranty Deed made and executed this 2nd day of October, 2009, by MISSION ROAD PROPERTY HOLDINGS, INC., a Florida Profit Corporation., whose mailing address is: 1715 So. Miramar Avenue, Indialantic, FL 32903 hereinafter called Grantor(s), and Mary Beth Glorioso, a single woman, and Joan Sheppard, a married woman, Joint Tenants with Rights of Survivorship hereinafter called the grantee(s): whose mailing address is 1715 So. Miramar Avenue, Indialantic, FL 32903

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the grantee, all that certain land situated in Brevard County, Florida, viz:

**SECTION 12, TRACT 30, DESCRIBED AS FOLLOWS:
THE SOUTH 200 FEET OF THE WEST 1/4 OF LOT 23, SECTION 12,
TOWNSHIP 29 SOUTH, RANGE 37 EAST, PLAT OF FLORIDA
INDIAN RIVER LAND CO., PLAT BOOK 1, PAGE 165, PUBLIC
RECORDS OF BREVARD COUNTY, FLORIDA, LESS THE WEST
25 FEET FOR ROAD, UTILITY AND DRAINAGE RIGHT OF WAY.**

**LOTS ALONG SECTION LINES AND HALF SECTION LINES ARE
MEASURED FROM SECTION LINES OR HALF SECTION LINES,
DISREGARDING RESERVATIONS SHOWN ON THE PLAT.**

Parcel I.D. No. 29-37-12-00-291

Subject to covenants, restrictions, easements of record and taxes for the current year.

Property is not homestead of grantor, pursuant to the laws of the State of Florida.

The Grantee understands there is no title insurance issued with the preparation of this Warranty Deed.

Vacant Land

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that it is lawfully seized of said land in fee simple: that it has good right and lawful authority to sell and convey said land: that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except easements and restrictions of record.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.

MISSION ROAD PROPERTY HOLDINGS, INC.

By X Mary Beth Glorioso
(GRANTOR) MARY BETH GLORIOSO,
IN HER OFFICIAL CAPACITY AS PRESIDENT

Glenn W. Tomasone
Witness
Print Name: Glenn W. Tomasone

Mitzi B. Thompson
Witness
Print Name: mitzi B. Thompson

STATE OF Florida COUNTY OF Brevard

The foregoing WARRANTY DEED instrument was acknowledged before me this 2nd day of October, 2009, by Mary Beth Glorioso, in her official capacity as President, who produced Driver's License for identification.

WITNESS my hand and official seal in the County and State last aforesaid this 2nd day of October, 2009.

Mitzi B. Thompson
Notary Signature
My Commission Expires: _____
Printed notary signature.
(SEAL)



This instrument was prepared by:
Patty Augustine
Record and Return to:
Glenn W. Tomasone, Esq.
1679 Garden Avenue
Melbourne, Florida 32935
Member Florida Bar #0096652

Return to: (enclose self-addressed stamped envelope)

Name: Fred & Peggy Hartmann
Address: 3140 Hield Rd.
Melbourne, FL 32904

This instrument Prepared by:
Name: Candice L. Miravalle/hg
Express Paralegal Services, Inc.
Address: 129 W. Hibiscus Blvd.
Melbourne, FL 32901

Property Appraiser's Parcel Identification
29-37-12-00-544/29-37-12-00-54
Folio Number(s)

Grantee(s) S.S. # (s)



CFN 2004283908 09-01-2004 09:24 am
OR Book/Page: 5356 / 0531

Scott Ellis
Clerk Of Courts, Brevard County
#Pgs: 1 #Names: 3
Trust: 1.00 Rec: 9.00 Serv: 0.00
Excise: 0.00
Mtg: 0.00 Int Tax: 0.00

SPACES ABOVE THIS LINE FOR PROCESSING DATA

SPACES ABOVE THIS LINE FOR RECORDING DATA

This Quit Claim Deed, Executed the 2004 day of 2004, by
Frederick M. Hartmann, joined by his wife, Peggy S. Hartmann
first party, to Hartmann Building Corp. of FLA, INC., a Florida Corporation
whose post office address is 1384 Malabar Rd. SE, Palm Bay, FL 32907
second party.

(Wherever used herein the terms "first party" and "second party" include all the parties to this instrument and their heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the first party, for and in consideration of the sum of \$ 10.00
in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release,
and quit claim unto the second party forever, all the right, title, interest, claim and demand which the said first
party has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of
Brevard State of Florida County, to-wit:

The North 1/2 of the following described property: The West 441.35
feet of the North 1/2 of Lot 9, Section 12, Township 29 South, Range
37 East, plat of FLORIDA INDIAN RIVER LAND COMPANY, Plat Book 1,
Page 165, Brevard County, Florida, LESS the North 20 feet and West
20 feet for road reservation.

and
The South 1/2 of the following described property: The West 441.35
feet of the North 1/2 of Lot 9, Section 12, Township 29 South, Range
37 East, plat of FLORIDA INDIAN RIVER LAND COMPANY, Plat Book 1,
Page 165, Brevard County, Florida, LESS the West 20 feet for road
reservation.

To Have and to Hold The same together with all and singular the appurtenances thereunto belonging
or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said
first party, either in law or equity to the only proper use, benefit and behoof of the said second party forever.

In Witness Whereof, the said first party has signed and sealed these presents the day and year first
above written.

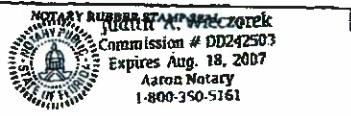
Signed, sealed and delivered in the presence of:
Witness Signature (as to First Grantor)
Printed Name
Witness Signature (as to First Grantor)
Printed Name
Witness Signature (as to First Grantor)
Printed Name
Witness Signature (as to First Grantor)
Printed Name

Greater Signature
Printed Name
Post Office Address
Co-Grantor Signature (if any)
Printed Name
Post Office Address

STATE OF Florida
COUNTY OF Brevard

I hereby Certify that on this day, before me, an officer duly authorized
to administer oaths and take acknowledgments, personally appeared


Frederick M. Hartmann and Peggy S. Hartmann
known to me to be the person described in and who executed the foregoing instrument, who acknowledged before me that they
executed the same, and an oath was not taken. (Check one) Said person(s) is/are personally known to me. Said person(s) provided the
following type of identification: FLID



Witness my hand and official seal in the County and State last aforesaid
this 20th day of August 2004
Notary Signature
Printed Name

This Warranty Deed

Made this 18th day of April A.D. 2000
by PIERRE L'ESPERANCE, MARRIED, JOINED BY
HIS WIFE JENNIFER L'ESPERANCE


CFN:2000080954 05-03-2000 03:41 pm
OR Book/Page: 4158 / 1024

hereinafter called the grantor, to
LYNDON T. JONES and LEE ANN JONES,
husband and wife

Sandy Crawford
Clerk Of Courts, Brevard County
#Pgs: 2 #Names: 4
Trust: 1.50 Rec: 9.00 Serv: 0.00
Deed: 0.00 Excise: 0.00
Mtg: 0.00 Int Tax: 0.00

whose post office address is:
2885 COREY ROAD
MALABAR, FLORIDA 32950
Grantees' SSN:

hereinafter called the grantee:

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of \$ 10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in **Brevard** County, Florida, viz:

See Schedule A attached hereto and by this reference made a part hereof.

SUBJECT TO TAXES AND ASSESSMENTS FOR THE CURRENT YEAR AND ALL SUBSEQUENT YEARS. SUBJECT TO RESTRICTIONS, EASEMENTS, AND COVENANTS OF RECORD. SUBJECT TO ALL APPLICABLE ZONING RULES AND REGULATIONS.

THIS CORRECTIVE DEED IS BEING RECORDED TO CORRECT LEGAL DESCRIPTION ON DEED RECORDED IN OFFICIAL RECORDS BOOK 4045, PAGE 1242.


Parcel Identification Number: 29-37-12-00-268

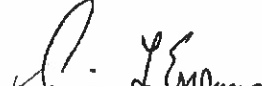
Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining. To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 1998


In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:


Witness Print Name: Shelly Bauer


Name & Address: PIERRE L'ESPERANCE LS
8888 GUILFORD ROAD COLUMBIA, MD 21048


Name: Robio Barbosa
Witness Print Name: Robio Barbosa


Name & Address: JENNIFER L'ESPERANCE LS

Name: _____
Witness Print Name: _____

Name & Address: _____ LS

Name: _____
Witness Print Name: _____

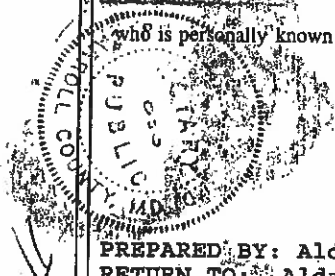
Name & Address: _____ LS


State of Maryland
County of Howard

The foregoing instrument was acknowledged before me this 18 day of April, 2000, by

PIERRE L'ESPERANCE and JENNIFER L'ESPERANCE

who is personally known to me or who has produced Driver's License as identification.




Notary Public
Print Name: Sharon Satterfield
My Commission Expires: 11-01-01

PREPARED BY: Alday-Donalson
RETURN TO: Alday-Donalson Title
175 E. Nasa Blvd., Suite 203
Melbourne, Florida 32901
File No: 1199306

SHARON SATTERFIELD
Notary Public, State of Maryland
My Commission Expires November 1, 2001



CFN:2000080954

OR Book/Page: 4158 / 1025

Schedule A

PARCEL 1:

A portion of the South 5 acres of Tract 24, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION in Section 12, Township 29 South, Range 37 East, as recorded in Plat Book 1, Page 165, of the Public Records of Brevard County, Florida and being more particularly described as follows: Commence at the original Southwest corner of said Tract 24, also being the Southwest corner of the Northwest 1/4 of said Section 12, thence go North 00°32'59" East along the West line of said Tract 24, a distance of 165.04 feet, thence go South 89°26'30" East a distance of 395.90 feet, thence go South 00°32'59" East a distance of 165.04 feet to the South line of aforesaid Tract 24, thence go North 89°26'30" West along said South line of Tract 24, a distance of 395.90 feet to the Point of Beginning. Subject to a 35.0 foot road, drainage and utility right-of-way along the West and South sides thereof.

PARCEL 2:

The South 5 acres of Tract 24, Section 12, Township 29 South, Range 37 East, LESS lands described in Official Records Book 3156, Page 2885, FLORIDA INDIAN RIVER LAND COMPANY, as recorded in Plat Book 1, Page 165, Public Records of Brevard County, Florida, subject to road Right of Way along South and West boundaries of said property.

SCHILLINGER & COLEMAN, P.A.
ATTORNEYS AT LAW

1311 BEDFORD DRIVE
MELBOURNE, FLORIDA 32940

POST OFFICE BOX 410818
MELBOURNE, FLORIDA 32941-0818

TELEPHONE (321) 255-3737
FACSIMILE (321) 255-3141

Karl W. Bohne, Jr.
Christopher J. Coleman
Charles A. Schillinger

Alison J. Moses
Richard W. Riehl
Stuart D. Sloan



July 19, 2007

Bonilyn Wilbanks-Free
Town of Malabar
2725 Malabar Rd.
Malabar, FL 32950-4472

Re: 1,675 feet of Old Mission Road

Dear Bonnie:

At the council meeting of July 16, 2007, the Town Council asked me for my opinion concerning whether the Town accepted the referenced roadway section under a contingent agreement with Deisha Wainuskis approximately in October 2004.

Based upon my review of the information provided to me, it would appear that the Council conditionally accepted the 1,675 of Old Mission Road, east of Corey Road in October of 2004. Based on my review of the verbatim tape recording of October 18, 2004, acceptance of the maintenance of the roadway was conditioned upon Ms. Wainuskis' contribution of \$14,000.00 for the maintenance of the road. During the council meeting the Town Administrator stated that the \$14,000.00 would cover 100% of the cost to bring the road to an acceptable standard for a 12 foot road.

Apparently, the \$14,000.00 was given to the Town and some portion of it was spent; however, in approximately June of 2005 Ms. Wainuskis asked for her money to be refunded because she could not meet certain St. John's River Water Management District criteria. Ms. Wainuskis was refunded \$13,162.50 on June 30, 2005. A note on a copy of the check provided to me indicates that the Town will not be improving the road.

I now understand that Ms. Joan Shepherd Glorioso is requesting the Town accept her \$14,000.00 for the construction and acceptance of the maintenance for this road.

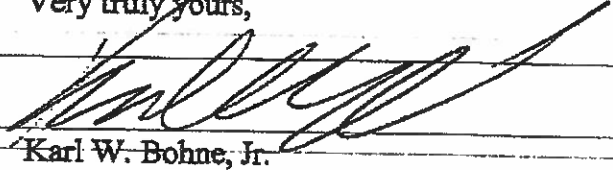
I am of the opinion that the original acceptance of the 1,675 feet of Old Mission Road was contingent upon the deposit of \$14,000.00 from Ms. Wainuskis and the Town's subsequent use of those funds. Unfortunately, in June of 2005 Ms. Wainuskis demanded a return of the balance of her money. In my opinion, this was a mutual cancellation of the agreement.

Bonilyn Wilbanks-Free
July 19, 2007
Page 2 of 2

Therefore, the contingency for accepting the 1,675 feet of Old Mission Road has failed and, in my opinion, the Town has not accepted the maintenance responsibility of that road segment. Also, the Town is not compelled, under any circumstances, to enter into a new agreement with any other party for the acceptance of that road.

Thank you very much for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Karl W. Bohne, Jr.

KWB/afb



Town of Malabar
 2725 Malabar Road
 Malabar, Florida 32950-4427

NO. 1339

10/20 2004

RECEIVED FROM *Debra Wainwright*

For: *Road Maintenance - Old Mission Road* \$ *14,000.00*

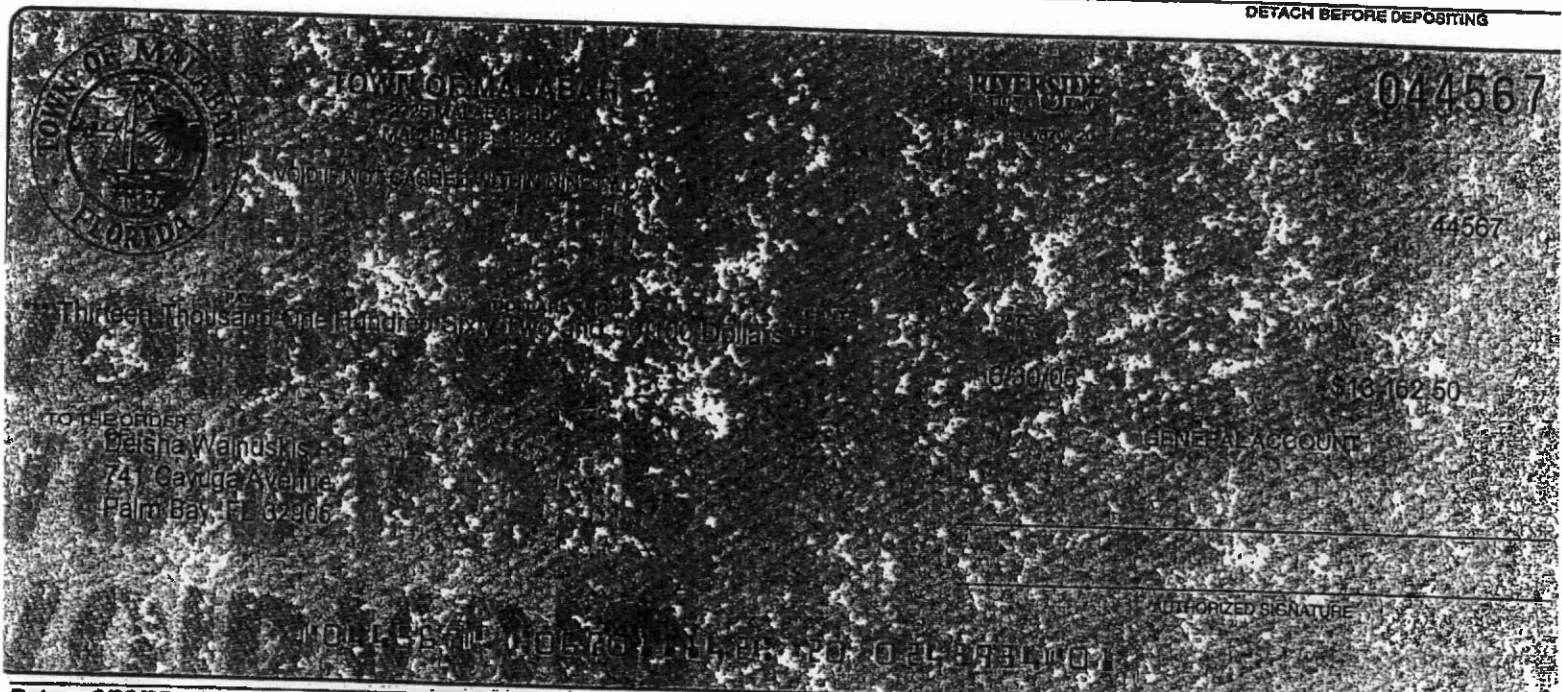
Acct. No.:

Cash _____ Check (Check No. *172442*)

[Signature]
 Office of Town Clerk

INVOICE NO.	GROSS AMOUNT	DISCOUNT	NET AMOUNT
			TOTAL 13,162.50

DETACH BEFORE DEPOSITING



Date: 6/30/05	Check: 44567	Amount: 13,162.50	Discount: 0.00	Vendor: Deisha Wainuskis
Invoice	Amount	Reference	Amount	Description
		10235	13,162.50	refund of road monies held for building road - Distribution
				Amount
				13,162.50

6/30/05 - Refunded. Will not be improving road (Old Mission Rd.)
V.

Record & Return to 03-5404



CFN:2003040582 02-12-2003 09:27 am
OR Book/Page: 4817 / 0313

C. GUY BATSEL, ESQUIRE
PENINSULA TITLE SERVICES, LLC
1400 Palm Bay Road, Ste B
Palm Bay, Florida 32905

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 2 #Names: 6
Trust: 1.50 Rec: 11.00 Serv: 0.00
Deed: 350.00 Excise: 0.00
Mtg: 0.00 Int Tax: 0.00

Parcel ID Number:

Grantee #1 TIN:

Grantee #2 TIN:

Warranty Deed

This Indenture, Made this 31st day of January, 2003 A.D., Between Norma M. Defuria and Diane Defuria Herrera, individually and as Trustees or their successors in the Norma M. Defuria Trust u/d/t April 28, 1994, and all amendments thereto. of the County of Brevard, State of Florida, DEISHA WAINUSKIS, a single woman, grantor, and

whose address is: 741 CAYUGA AVENUE, NE, PALM BAY, FL 32905

of the County of BREVARD, State of Florida, grantee.

Witnesseth that the GRANTOR, for and in consideration of the sum of TEN DOLLARS (\$10) DOLLARS, and other good and valuable consideration to GRANTOR in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said GRANTEE and GRANTEE'S heirs, successors and assigns forever, the following described land, situate, lying and being in the County of Brevard, State of Florida, to wit: see exhibit "A" attached hereto and made a part hereof.

Subject to restrictions, reservations and easements of record, governmental authority, if any and taxes for the year 2003 and subsequent years.

Grantor covenants that the marriage between Norma M Defuria and Frank P. Defuria, deceased was continuous and uninterrupted from a time prior to their taking title to the subject property until the death of Frank P. Defuria on January 18, 1994.

and the grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

In Witness Whereof, the grantor has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Printed Name: Gloria Robaina
Witness

BY: NORMA M. DEFURIA (Seal)
individually and as Trustee
P.O. Address: 2965 Corey Road, Malabar, FL 32950

Printed Name: DIANE DEFURIA HERRERA
Witness

BY: DIANE DEFURIA HERRERA (Seal)
individually and as Trustee
P.O. Address: 2965 Corey Road, Malabar, FL 32950

STATE OF Florida
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 31st day of January, 2003 by NORMA M. DEFURIA, individually and as Trustee and DIANE DEFURIA HERRERA, individually and as Trustee on behalf of said Florida trust who are personally known to me or who have produced their Florida driver's license as identification.



Gloria Robaina
MY COMMISSION # DD092610 EXPIRES
April 11, 2006
BONDED THROUGH FARM INSURANCE, INC.

Printed Name: _____
Notary Public
My Commission Expires: _____

EXHIBIT "A"

The North 1/4 of Lots 9 and 10, Section 12, Township 29 South, Range 37 East, FLORIDA INDIAN RIVER LAND COMPANY, a subdivision according to the plat thereof, recorded in Plat Book 1, Page 165, Public Records of Brevard County, Florida, LESS road reservations on the North, LESS the West 441.35 feet of the North 1/4 of Lot 9, Section 12, Township 29 South, Range 37 East, FLORIDA INDIAN RIVER LAND COMPANY, a subdivision according to the plat thereof, recorded in Plat book 1, Page 165, Public Records of Brevard County, Florida, LESS the North 20 feet and the West 20 feet for road reservations.

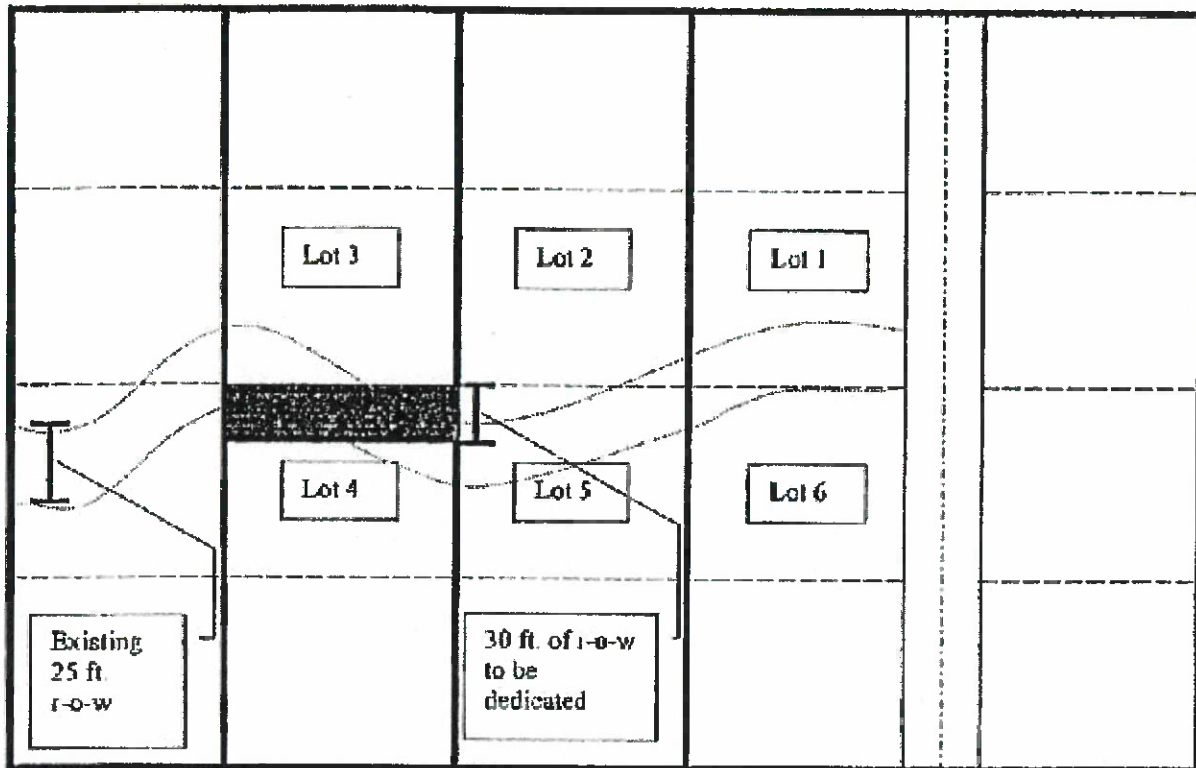


CFN:2003040582

OR Book/Page: 4817 / 0314

feet of right-of-way on each side of the section line or property line; otherwise a building permit will not be issued. (See illustration No. 5 below.)

Illustration #5



(Illustration No. 5 depicts the property that the owner of Lot No. 4 must be dedicated to the town as a right-of-way before a building permit will be issued. **Illustration No. 5 assumes that the original dedication of the right-of-way was dedicated such that there was an unequal distribution of right-of-way along the section line.**)

All landowners whose property abuts the twenty-five (25) foot right-of-way which is being or is improved pursuant to the provisions of this division must comply with the dedication provisions aforementioned. No building permits shall be issued unless the landowner dedicates the required right-of-way.

Interim roadways are only permitted when property owners are unable to provide the sixty (60) feet right-of-way required by the Town's Land Development Code and Comprehensive Plan. Once a building permit is issued for all the parcels abutting the interim roadway, the owners of said parcels must, by any means necessary, pay the assessments necessary to bring the roadway up to the standards for sixty (60) foot rights-of-way in effect when the permit was issued.

(Ord. No. 01-01, § 1-4, 2-5-01)

Sec. 13-40. Cost of improvement (bond).

Each owner who applies for a building permit, either personally or through an agent or contractor, shall complete an application for a road permit, in the form approved by the town council and shall execute a written agreement with the Town of Malabar, Brevard County, Florida, in a form approved by the town council and town attorney, to construct a road as described hereinabove in accordance with the town's standards. The entire cost of constructing such road shall be the responsibility of the owner and, prior to the issuance of such road permit, the owner shall post a cash bond with the town. The amount of the bond shall be set by the town council after receiving public bids for said improvements and shall be equal to the estimated cost of completion of the improvement plus twenty (20) percent of such amount. The procedure for establishing the road bond shall be established by town council. Procedure shall be adopted by resolution and may be amended by resolution of the town council from time to time, as needed.

The applicant shall have thirty (30) days from the date the bond is set to post said bond. Failure to post a bond within thirty (30) days shall result in revocation of all road and building permits issued.

Any person desiring to appeal any decisions made by the town council related to bonds shall do so by filing a notice of appeal with a court of competent jurisdiction as required by the laws of the State of Florida. All procedural requirements for taking an appeal to a court of competent jurisdiction must be complied with by the party making the appeal.

(Ord. No. 01-01, § 1-5, 2-5-01)

Sec. 13-41. Road permit application and fee.

In order to obtain a road permit, an applicant must complete a road permit application. The application for a road permit shall be in a form approved by the town and shall include the following:

- (1) Such surveys and drawings as are required by the standards attached hereto as Exhibit "A" or "B", whichever is applicable. The standards set forth in Exhibit "A" and "B" may be amended from time to time by resolution of the town council of the town.
- (2) Such reports as to soil composition as are required by the standards attached

Public Rights of Way Accepted Streets 13' wide or less as of 9/23/2019

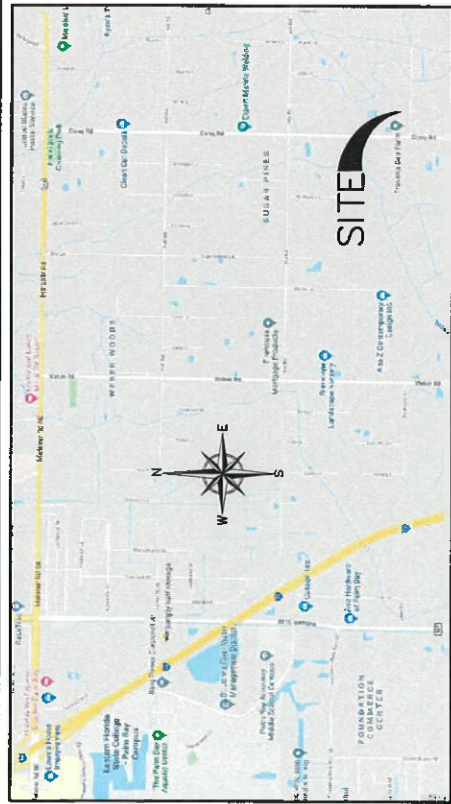
<u>Street Name.</u>	<u>Width</u>	<u>Number of Homes</u>	
Crescent rd.	13'	4	
Flashy Ln.	10'	2	
Gator Way.	10'	3	
Hard Ln.	13'	3	
Hawthorne ave	8'	1	
Hunter Ln.	13'	8	
Johnston Ave.	11'	4	
Leghorn rd.	13'	2	
Linrose Ln.	12'	4	
Moss Rose ave.	12'	4	
New Jersey Ave.	9'	3	
Nord St.	10'	3	
Orange ave.	13'	4	
Raulerson Ln.	12'	3.	*approved by council 9/23/19
Rivet Ln.	13'	3	
Ski Ln.	11'	3	

Not Accepted/Not Improved roads

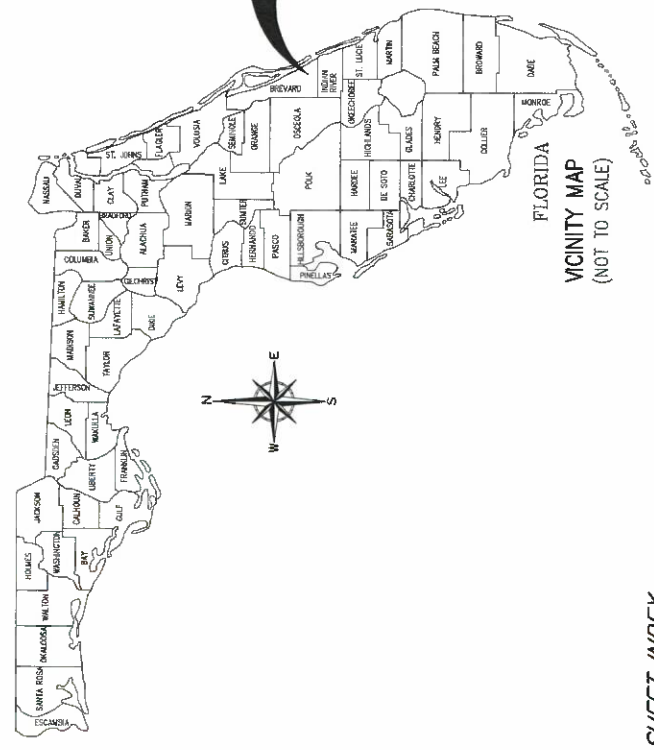
Candy Ln.	8'	2	
Christian Ln.	10'	?	

Private Easement not maintained by town

Alexander Lane	13'	6	
----------------	-----	---	--



LOCATION MAP
(NOT TO SCALE)



VICINITY MAP
(NOT TO SCALE)

SHEET INDEX
 SHEET 1 COVER SHEET
 SHEET 2 OVERALL BOUNDARY DETAILS
 SHEETS 3 & 4 TOPOGRAPHIC DETAILS

SYMBOL LEGEND
 X 23.4 FIELD LOCATED POINT WITH ELEVATION

ABBREVIATIONS

- CL CENTERLINE
- CM CONCRETE MONUMENT
- EL ELEVATION
- FND FOUND
- IP IRON PIPE
- IR IRON ROD
- NO NUMBER
- P.C. PROPERTY CORNER
- PK PARKER KALON NAIL
- P.L.S. PROFESSIONAL LAND SURVEYOR
- RNG. RANGE
- SEC. SECTION
- TWP. TOWNSHIP

SURVEYOR'S NOTES

1. BEARINGS AS SHOWN HEREON ARE BASED ON STATE PLANE COORDINATES, NORTH AMERICAN DATUM OF 1983/2011 ADJUSTED (N.A.D. 83/11), FLORIDA EAST ZONE, REFERENCE A BEARING OF N89°33'01"W ALONG THE NORTH RIGHT OF WAY LINE OF BEEKEEPER ROAD.
2. ELEVATIONS AS SHOWN HEREON REFERENCE THE NATIONAL GEODETIC VERTICAL DATUM OF 1988 (N.A.V.D. 88), REFERENCE NATIONAL GEODETIC SURVEY (N.G.S.) BENCHMARK "BREVARD GPS 5024", ELEVATION = 23.36 FEET. THE ELEVATIONS AS SHOWN HEREON HAVE A VERTICAL TOLERANCE OF 0.10 FEET.
3. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A TITLE COMMITMENT.
4. THIS SURVEY IS BASED ON A CLOSED GEOMETRIC FIGURE EXCEEDING A HORIZONTAL CLOSURE OF 1:10,000.
5. THERE WAS NO ATTEMPT TO LOCATE ANY SUBSURFACE FOUNDATIONS.
6. NO UNDERGROUND UTILITIES WERE LOCATED OR SHOWN HEREON.
7. THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR UNLESS DIGITALLY SIGNED.
8. THIS SURVEY WAS DONE IN THE FIELD UTILIZING GLOBAL POSITIONING SYSTEM (G.P.S.) WITH REAL TIME KINEMATIC (R.T.K.). ALL DISTANCES GIVEN ARE GRID DISTANCES. THE SCALE FACTOR IS 0.9999961624.

LEGAL DESCRIPTION

THE EAST 1/2 OF THE SOUTH 200 FEET OF LOT 23, SECTION 12, TOWNSHIP 29 SOUTH, RANGE 37 EAST, PLAT OF FLORIDA INDIAN RIVER LAND CO., PLAT BOOK 1, PAGE 165, BREVARD COUNTY, FLORIDA, LESS THE EAST 25 FEET FOR ROAD, UTILITY AND DRAINAGE RIGHT OF WAY AND LESS THE SOUTH 35 FEET FOR ROAD, UTILITY AND DRAINAGE RIGHT OF WAY.

LOCATION

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE "BOUNDARY SURVEY" AS SHOWN HEREON IS A TRUE AND CORRECT REPRESENTATION OF A FIELD SURVEY MADE UNDER MY DIRECTION AND CHARGE ON MARCH 2, 2020 AND SAID "BOUNDARY SURVEY" IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. IT IS FURTHER CERTIFIED THAT THIS "BOUNDARY SURVEY" COMPLIES WITH THE STANDARDS OF PRACTICE FOR "BOUNDARY SURVEY" SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

BETSY LINDSAY, INC.
 SURVEYING AND MAPPING

ELIZABETH A. LINDSAY, P.L.S.
 FLORIDA REGISTRATION NO. 4724

NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER UNLESS DIGITALLY SIGNED



BETSY LINDSAY, INC.
 SURVEYING AND MAPPING
 7997 SW JACK JAMES DRIVE SUWART, FLORIDA 34997
 LICENSED BUSINESS NO. 6582
 (772)286-5793 (772)286-5893 FAX

DATE	REVISIONS

DATE: 03/02/2020
 SCALE: NOT TO SCALE
 FIELD BK. SURV. 2
 DRAWN BY: J.L.L.
 CHECKED BY: E.A.L.

A PORTION OF LOT 23, SEC. 12, TWP. 29 S.
 RANG. 37 E. PLAT OF INDIAN RIVER LAND CO.
 BREVARD COUNTY, FLORIDA
 BOUNDARY SURVEY
 ADAM HAYWARD

SHEET NO. 1
 OF 4 SHEETS
 PROJECT NO. 20-16

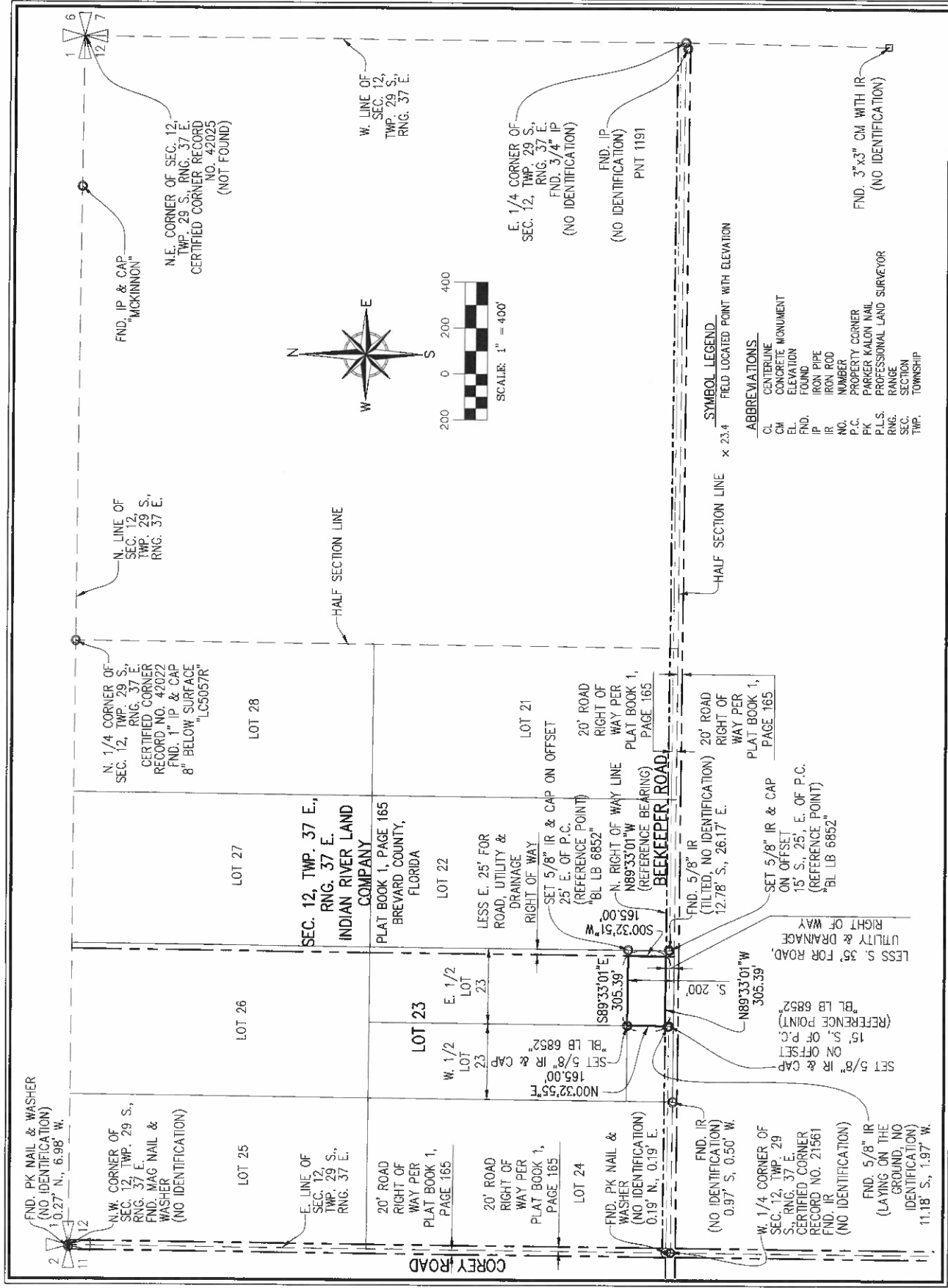
B Betsy Lindsay, Inc.
 SURVEYING AND MAPPING
 7987 SW JACK JAMES DRIVE STUART, FLORIDA 34997
 LICENSED BUSINESS NO. 6852
 (772) 286-5793 (772) 286-5803 FAX

DATE	REVISIONS

DATE: 03/02/2020
 SCALE: 1" = 400'
 FIELD BK. BREVARD 2
 DRAWN BY: JLB
 CHECKED BY: JLB

BOUNDARY SURVEY
 ADAM HAYWARD
 A PORTION OF LOT 23 SEC. 12, TWP. 29 S.,
 BREVARD COUNTY, FLORIDA
 RING. 37 E., PLAT OF INDIAN RIVER LAND CO.

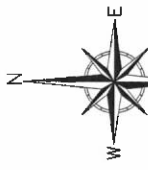
SHEET NO. 2
 OF 4 SHEETS
 PROJECT NO. 20-16



SYMBOL LEGEND
 x 23.4 FIELD LOCATED POINT WITH ELEVATION

- ABBREVIATIONS**
- CL CENTERLINE
 - CM CONCRETE MONUMENT
 - EL ELEVATION
 - FND FOUND
 - IP IRON PIPE
 - IR IRON ROD
 - NO NUMBER
 - P.C. PROPERTY CORNER
 - PK PARKER KALON NAIL
 - P.L.S. PROFESSIONAL LAND SURVEYOR
 - RNG. RANGE
 - SEC. SECTION
 - TWP. TOWNSHIP

SCALE: 1" = 400'



FND. PK NAIL & WASHER
 (NO IDENTIFICATION)
 1.0.27' N., 6.98' W.

N.W. CORNER OF
 SEC. 12, TWP. 29 S.,
 RING. 37 E.
 FND. MAG NAIL &
 WASHER
 (NO IDENTIFICATION)

E. LINE OF
 SEC. 12,
 TWP. 29 S.,
 RING. 37 E.

20' ROAD
 RIGHT OF
 WAY PER
 PLAT BOOK 1,
 PAGE 165

20' ROAD
 RIGHT OF
 WAY PER
 PLAT BOOK 1,
 PAGE 165

FND. PK NAIL &
 WASHER
 (NO IDENTIFICATION)
 0.19' N., 0.19' E.

FND. IR
 (NO IDENTIFICATION)
 0.97' S., 0.50' W.

W. 1/4 CORNER OF
 SEC. 12, TWP. 29
 S., RING. 37 E.
 CERTIFIED CORNER
 RECORD NO. 21561
 FND. IR
 (NO IDENTIFICATION)

FND. 5/8" IR
 (LAYING ON THE
 GROUND, NO
 IDENTIFICATION)
 11.18' S., 1.97' W.

SET 5/8" IR & CAP
 ON OFFSET
 15' S., 25' E. OF P.C.
 (REFERENCE POINT)
 "BL LB 6852"

LESS S. 35' FOR ROAD,
 UTILITY & DRAINAGE
 RIGHT OF WAY

FND. 5/8" IR
 (TILTED, NO IDENTIFICATION)
 12.78' S., 26.17' E.

20' ROAD
 RIGHT OF
 WAY PER
 PLAT BOOK 1,
 PAGE 165

N. 1/4 CORNER OF
 SEC. 12, TWP. 29 S.,
 RING. 37 E.
 CERTIFIED CORNER
 RECORD NO. 42022
 FND. 1" IP & CAP
 8" BELOW SURFACE
 "LC5057R"

N. LINE OF
 SEC. 12,
 TWP. 29 S.,
 RING. 37 E.

LESS E. 25' FOR
 ROAD, UTILITY &
 DRAINAGE
 RIGHT OF WAY

SET 5/8" IR & CAP ON OFFSET
 25' E. OF P.C.
 (REFERENCE POINT)
 "BL LB 6852"

N. RIGHT OF WAY LINE
 (REFERENCE BEARING)
 N89°33'01"W

300.3251' W
 165.00'

305.39'
 589°33'01"E

305.39'
 5' 200'

SET 5/8" IR & CAP
 ON OFFSET
 15' S., 25' E. OF P.C.
 (REFERENCE POINT)
 "BL LB 6852"

20' ROAD
 RIGHT OF
 WAY PER
 PLAT BOOK 1,
 PAGE 165

20' ROAD
 RIGHT OF
 WAY PER
 PLAT BOOK 1,
 PAGE 165

20' ROAD
 RIGHT OF
 WAY PER
 PLAT BOOK 1,
 PAGE 165

20' ROAD
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20' ROAD
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 PAGE 165

20' ROAD
 RIGHT OF
 WAY PER
 PLAT BOOK 1,
 PAGE 165

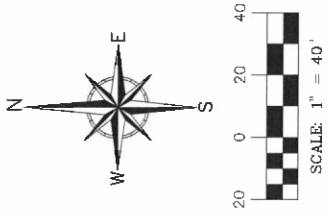
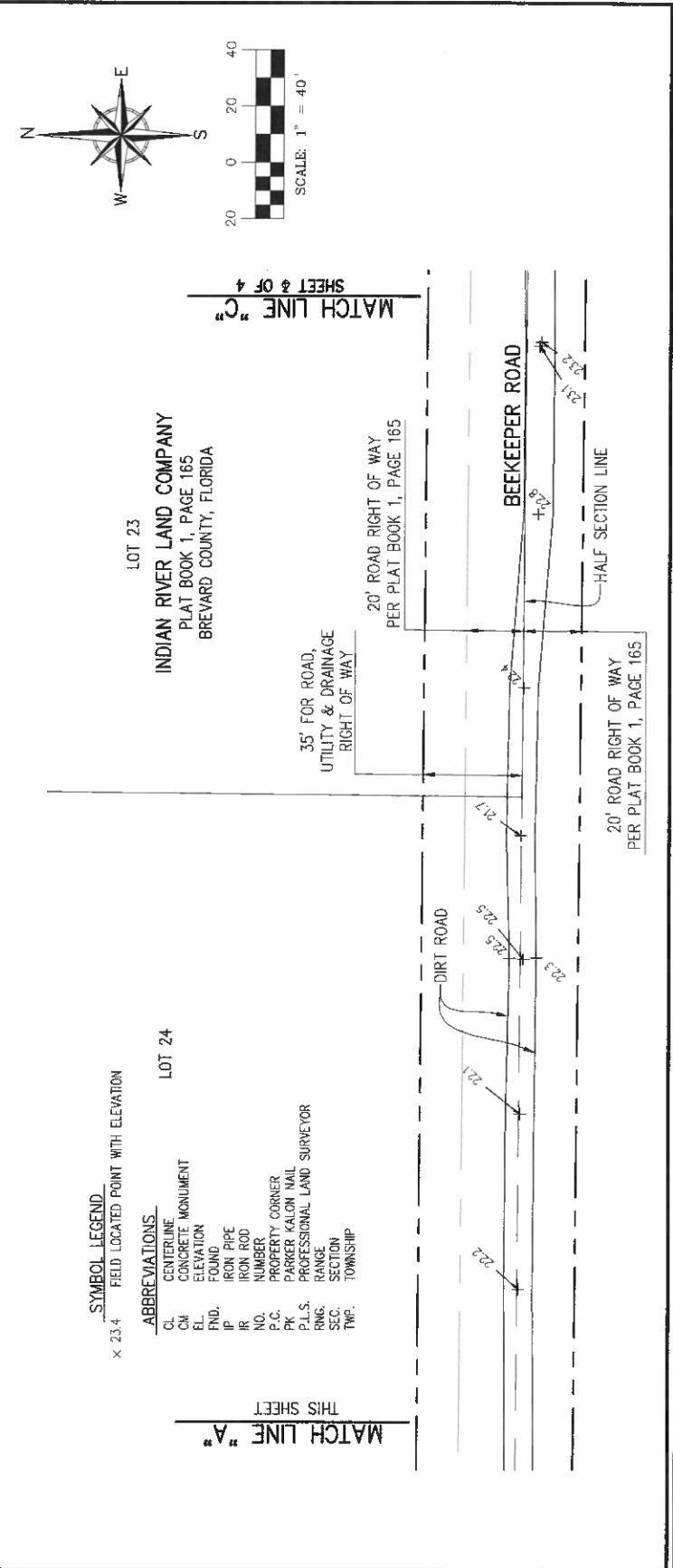
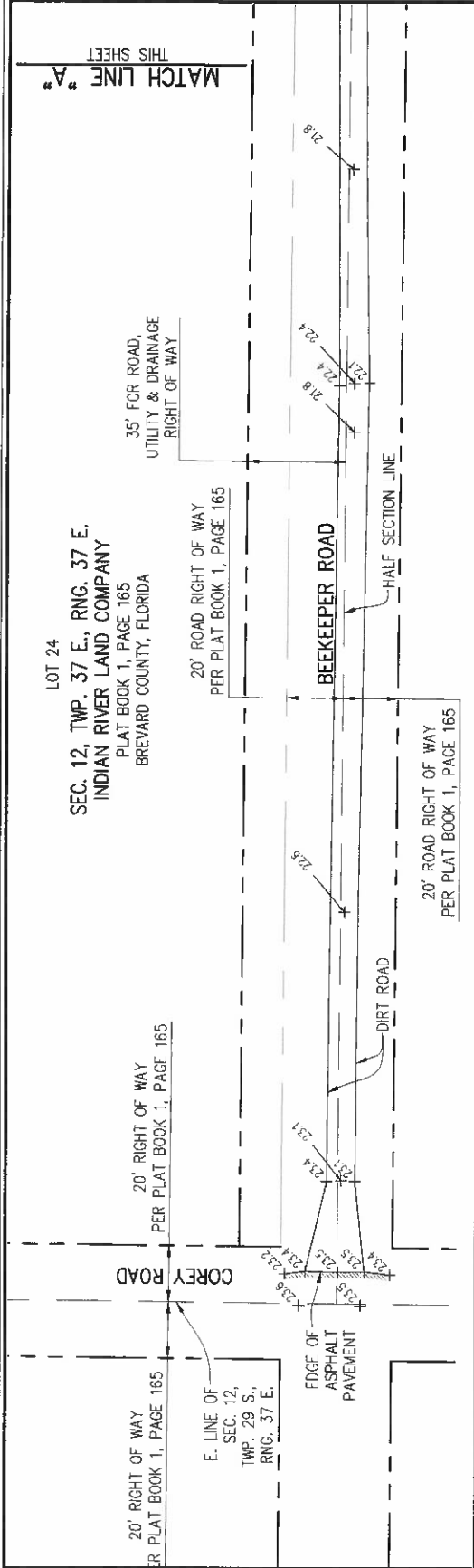
20' ROAD
 RIGHT OF
 WAY PER
 PLAT BOOK 1,
 PAGE 165

B BETSY LINDSAY, INC.
SURVEYING AND MAPPING
7997 B.W. JACK JAMES DRIVE SUWANEE, FLORIDA 34997
(772)266-6759 (772)266-9093 FAX
LICENSED BUSINESS NO. 0652

DATE	REVISIONS
02/02/2020	SCALE 1"=40'
	FIELD BY: ADAM HAYWARD
	DRAWN BY: J.L.E.
	CHECKED BY: C.A.L.

BOUNDARY SURVEY
ADAM HAYWARD
A PORTION OF LOT 23, SEC. 12, TWP. 29 S.
PLAT OF INDIAN RIVER LAND CO.
BREVARD COUNTY, FLORIDA

SHEET NO. 3
OF 4 SHEETS
PROJECT NO.
20-16



SYMBOL LEGEND
× 23.4 FIELD LOCATED POINT WITH ELEVATION

- ABBREVIATIONS:
- CL CENTERLINE
 - CM CONCRETE MONUMENT
 - EL ELEVATION
 - FND. FOUND
 - IP IRON PIPE
 - IR IRON ROD
 - NO. NUMBER
 - P.C. PROPERTY CORNER
 - PK PARKER KALON NAIL
 - P.L.S. PROFESSIONAL LAND SURVEYOR
 - RNG. RANGE
 - SEC. SECTION
 - TWP. TOWNSHIP

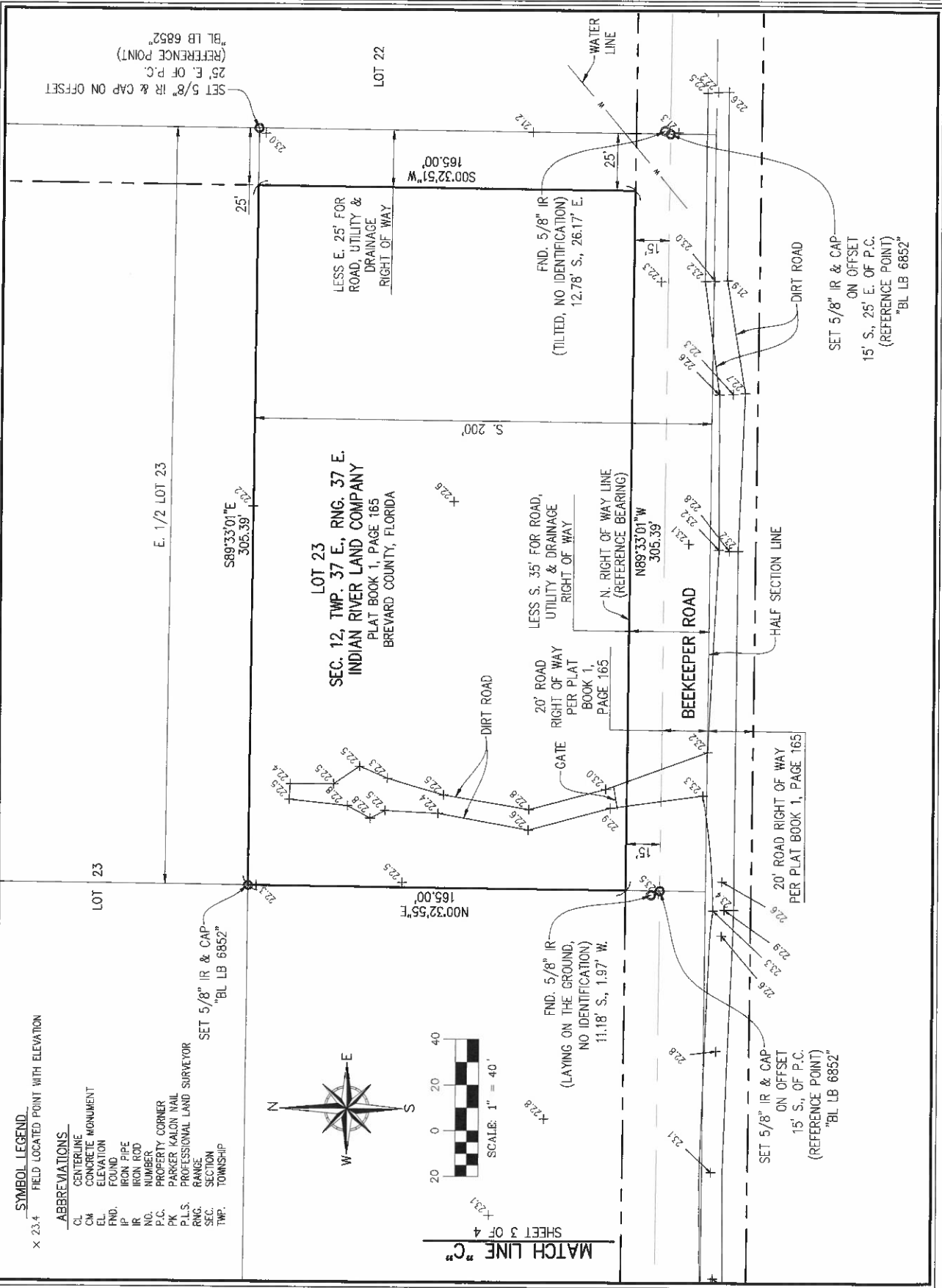
B BETSY LINDSAY, INC.
SURVEYING AND MAPPING
7987 SW JACK JAMES DRIVE SUITE 200, FLORIDA 34907
(772) 286-5793 (772) 286-5903 FAX
LICENSED BUSINESS NO. 6852

DATE	REVISIONS

DATE: 03/02/2020
SCALE: 1" = 40'
FIELD BY: ADAM HAYWARD
DRAWN BY: G.A.
CHECKED BY: G.A.L.

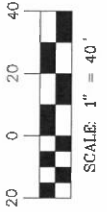
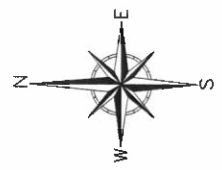
BOUNDARY SURVEY
ADAM HAYWARD
A PORTION OF LOT 23, SEC. 12, TWP. 29 S.,
RNG. 37 E., PLAT OF INDIAN RIVER LAND CO.,
BREVARD COUNTY, FLORIDA

SHEET NO. 4
OF 4 SHEETS
PROJECT NO. 20-16



SYMBOL LEGEND.
FIELD LOCATED POINT WITH ELEVATION

ABBREVIATIONS
CL CENTERLINE
CM CONCRETE MONUMENT
EL. ELEVATION
FND. FOUND
IP IRON PIPE
IR IRON ROD
NO. NUMBER
P.C. PROPERTY CORNER
PK PARKER KALON NAIL
P.L.S. PROFESSIONAL LAND SURVEYOR
RNG. RANGE
SEC. SECTION
TWP. TOWNSHIP



MATCH LINE "C"
SHEET 3 OF 4

LESS E. 25' FOR ROAD, UTILITY & DRAINAGE RIGHT OF WAY

LESS S. 35' FOR ROAD, UTILITY & DRAINAGE RIGHT OF WAY

20' ROAD RIGHT OF WAY PER PLAT BOOK 1, PAGE 165

20' ROAD RIGHT OF WAY PER PLAT BOOK 1, PAGE 165

20' ROAD RIGHT OF WAY PER PLAT BOOK 1, PAGE 165

LESS 5/8" IR & CAP ON OFFSET 25' E. OF P.C. (REFERENCE POINT) "BL LB 6852"

FND. 5/8" IR (LAYING ON THE GROUND, NO IDENTIFICATION) 11.18' S., 1.97' W.

FND. 5/8" IR (TILTED, NO IDENTIFICATION) 12.78' S., 26.17' E.

SET 5/8" IR & CAP ON OFFSET 15' S., 25' E. OF P.C. (REFERENCE POINT) "BL LB 6852"

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 10.c.

Meeting Date: July 06, 2020

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

SUBJECT: Action on Road Improvement Waiver Request – Beekeeper Lane

BACKGROUND/HISTORY:

Ord 2020-01 was adopted to provide a waiver process for applicants to follow when dealing with the requirements for road improvements. It gives Council authority to grant "waivers" to the strict requirements.

In this case, the property owner of a parcel three lots east of Corey on the ROW known as Beekeeper Lane has asked for Council consideration of a waiver to the improvement regulations.

The applicant, Mr. Adam Hayward, is requesting a waiver to the requirement of '*developing the road to the furthest point of the parcel to be developed*' - and a waiver to the improvement requirements for a minor collector.

The applicant will be in attendance and has been provided the Town Engineer's memo and recommendation.

ATTACHMENT:

Waiver application – Beekeeper Lane
Malabar Comp Plan Chapter 2, Transportation
Malabar Accepted Streets list – see page 4
Town Engineer Morris Smith recommendation for Council

ACTION OPTIONS:

Action on waiver request

Reason for Waiver Request

MAR 17 2020 14:11

I am requesting this Waiver due to property encroachment issues that would be caused by the current required Right Of Way (ROW) width. The width of the "Beekeeper" ROW per the plat is 50 ft. and my surveyor has confirmed what is shown by the County Property Appraiser's aerial photos attached to this application, which is that widening "Beekeeper" to 50' would cut well into the driveway and drain the pond of an existing residence abutting Corey Road. Additionally, Beekeeper is also technically a Minor Collector per the town, requiring a 70 ft. ROW which would require both 10 more feet to be cut into the residence (which would likely cut into the house itself) and 10 more feet to be divided out of each parcel along both sides of the ROW and dedicated as ROW. This would require convincing 5 land owners to give away more of their land (including part of a driveway, house and pond), as well as convincing them (and likely a judge) that the town suddenly needs a 70 ft ROW for a single home, while none of the other minor collectors that serve hundreds of homes are over 50 ft and the majority are 40 ft or less.

Beekeeper is an extension of Old Mission going east of Corey Road that would eventually end at Marie Street and is currently only legally used a couple times a week by an agricultural lessee to access his Sheep and Goat Farm and on rare occasion by the Fire Department, there are no homes abutting Beekeeper. The first 850 ft. of Beekeeper has been improved in the past to roughly 25 ft wide with a 10 ft roadway with a crushed asphalt surface and a drainage swale on the north side that connects to the main road drainage canal at Corey rd. The first 200 ft is still maintained (presumably by FPL) due to a utility pole that serves the aforementioned property abutting Corey rd. The total length of the ROW from Corey to the furthest end of my parcel is 1284 feet.

My proposal to the town is to allow a waiver to "Section 13-38 Precondition to Issuance of Building Permit – Completion of Road" for the reasons stated above, with the following conditions: That I be responsible for bringing the current roadway within the ROW to standards approved by the town engineer that keep within the footprint of the currently used roadway from Corey rd to my proposed driveway location (a total of 1076 ft), and be required to share in the cost of ROW improvement to the full width if in the future it is widened. I also offer the following conditions if council finds them necessary: That I enter into an agreement to continue maintenance of said roadway and that the agreement is attached to the deed of the property in perpetuity, and that my mailbox and trash collection are at Corey Road instead of on Beekeeper to reduce the amount of potential traffic necessary.

I am only one person seeking to move to this beautiful rural area and wish to work with the town in every way to keep my impact to as minimal as possible while keeping in accordance with the town's comprehensive plan.

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

MAR 17 2020 14:11

**RIGHT OF WAY (ROW)
ROAD IMPROVEMENT WAIVER APPLICATION**

This application is separate and in addition to the Road Improvement Application that must be completed, with required attachments, and returned to the Town Clerk's office.

Name of Applicant(s) Adam Hayward Tel: 321-831-6147

Mailing Address: 2735 Woodside Ave. Winter Park, FL 32789 Email: ahayward03@msn.com

Name of Owner if other than Applicant: N/A Tel: N/A

Legal description of property covered by application:

Township 29, Range 37, Section 12, Parcel 295, Road ROW Name "Beekeeper"

Property Address: Not Assigned Zoning classification RR65

Existing Special Conditions or Conditional Uses Previously Granted: None

Required ROW dedicated ____ / will be dedicated x prior to hearing per Section 13-39 of Road Improvement Code in Chapter 13 of Malabar Code of Ordinances.

Reason for waiver request (state specific hardship or attach correspondence, drawings, etc.).
See attached explanation and illustrations

Required attachments:

- Hearing fee of \$300.00 for Residential and \$1,500.00 for Commercial, which includes advertising, administrative time, legal noticing and mailing.
- Proof of ownership of abutting parcel
- Survey to include Site layout depicting the right-of-way (ROW), roadway width and length subject to waiver request and parcel owned by applicant
- List of property owners (with tax parcel numbers) abutting the road right-of-way involved in the waiver request 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.

[Signature] 3/17/20
Applicant(s) Date

Chapter 13, Malabar Code of Ordinances, Section 13-38(c) provides as follows for waivers:

"(c) Waiver. The Town Council may grant a waiver to the provisions of Section 13-38 (b) (1) and (2).

1. The below stated procedures shall in all respects be utilized for consideration of a waiver to subsection (b)(1) and (2). In order to authorize a waiver under this section the Town Council must find the following:

i. That special conditions and circumstances exist and that the presence of which would make complying with section 13-38 (b) (1) or (2) unreasonable. Financial or economic reasons, conditions or circumstances shall not be grounds for a waiver under this section;

ii. The special conditions and circumstances are not caused in any way by the owner or applicant;

iii. That such waiver will not be injurious or detrimental to the public welfare;

iv. That the waiver granted is the minimum waiver that will make possible the reasonable use of the land;

v. As a condition to the issuance of a waiver the owner of the property for which such waiver is granted shall dedicate the right of way required by section 13-39 of the code, if no such public right of way exists at the time of the granting of a waiver authorized herein, through the furthest boundary of the lot of record on which a principal structure or accessory structure is to be constructed.

2. The owner of the property for which such waiver is granted shall also execute an agreement in recordable form with the Town that binds the owner and his/her successors in interest of the property for which such waiver is granted to pay for the completion of the entire width of the right of way as it existed on the date the waiver is granted by the Town Council through the furthest boundary of the lot of record on which a principal structure or accessory structure is constructed in the event the road is completed by another. The Agreement shall provide, in part, that should the owner of the property for which the waiver was granted fail to pay for the completion of the entire width of the right of way through the furthest boundary of the lot of record when it is constructed by another then the Town may reimburse the person who completed the road portion through the furthest boundary of the lot of record of the owner who was granted the waiver and the Town shall be entitled to record a lien against the property for which such a waiver was granted for the cost of the reimbursement and/or the Town may withhold the issuance of any future building permit, development order or development permit, for the property for which such waiver is granted.

3. By way of example, and not by way of limitation, "special circumstances" may include:

i. Environmental conditions, and restrictions exist which prohibit any disturbance of such area and make it impossible to complete the road to the furthest extent of the property; [for example where mitigation is not possible]; or

ii. There exists no dedicated public right of way immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies; or

iii. The property immediately abutting and beyond furthest boundary of the lot of record for which the waiver applies is owned by a governmental agency and is designated as conservation or environmentally sensitive land; or

iv. The property immediately abutting and beyond the furthest boundary of the lot of record for which the waiver applies already has existing accepted access through the use of another public or private right of way

4. Town Council may impose additional reasonable conditions and safeguards that it deems appropriate;

5. The Town Council may prescribe a reasonable time limit within which the action for which the waiver is required shall be begun or completed or both.

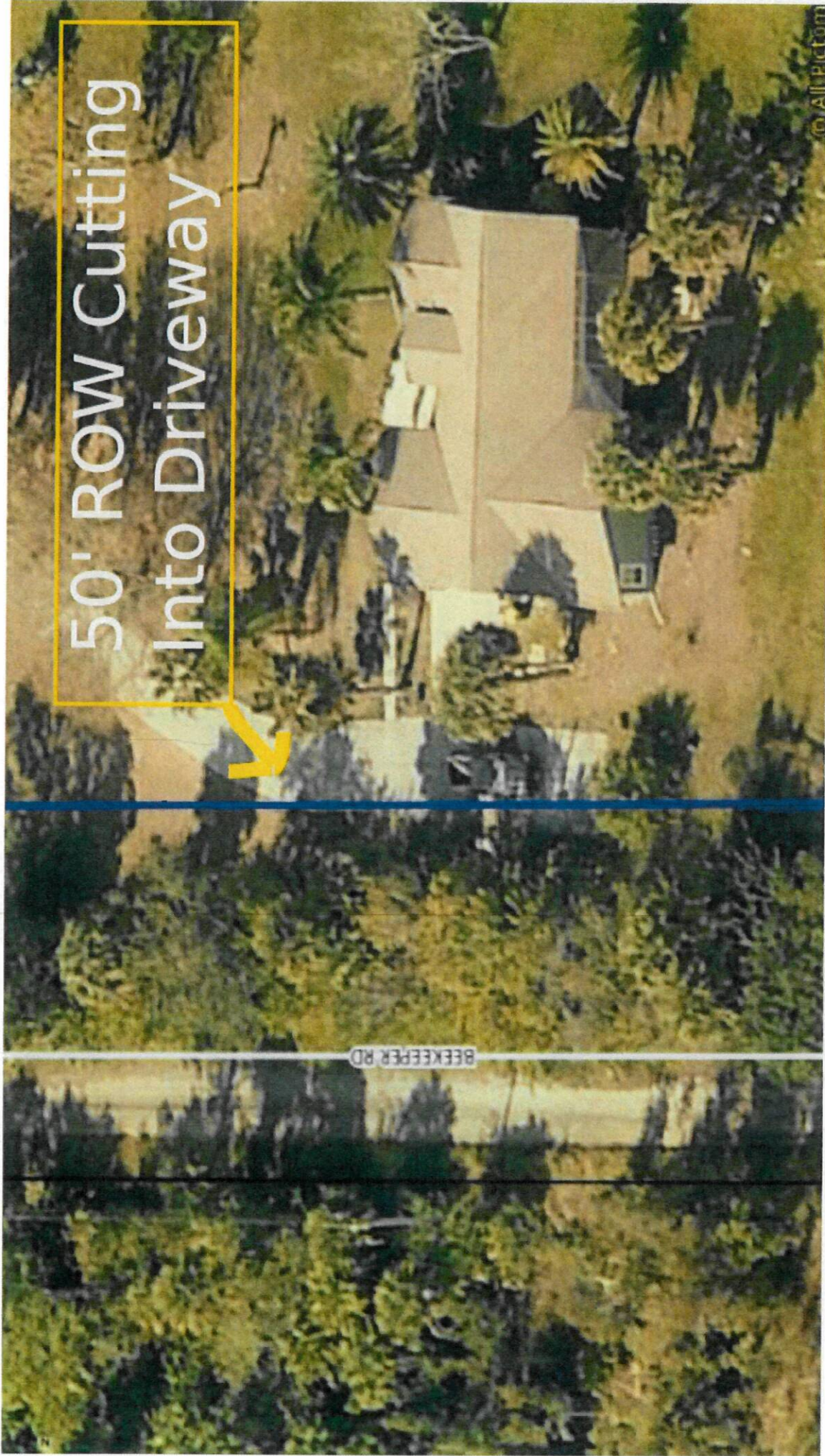
6. The decision of the Town Council regarding a request for a waiver is final and no reconsideration, rehearing or further appeal to the Town is available.

7. Application Process: Any person owning an interest in any real property may apply to the Town Council for a waiver hereunder. The application shall be accompanied by a fee established from time to time by the Town Council. The application shall be in such form as provided by the Town, and shall contain the following information:

- i. The name of the owner of the particular real property shall be included.
- ii. If the applicant is other than all the owners of the particular property, written consent signed by all owners of the particular real property shall be attached.
- iii. The application shall contain the legal description of the particular real property, accompanied by a certified survey of that portion of the map maintained by the property appraiser reflecting the boundaries of the particular real property.
- iv. The application shall contain the current zoning classification, and any specified conditions or conditional use designation as recorded on the official zoning maps.

8. Public Hearing: Notice Upon receipt of an executed application pursuant to this section, the Town Clerk forthwith shall schedule a hearing on the application before the Town Council. Notice of the time and place of the public hearing shall be given to the applicant at least 15 days prior to the public hearing. Notice of the time and place of the public hearing on the application shall be mailed, at least 15 days prior to the public hearing, to all property owners abutting the road right of way in question. Such notice shall contain the name of the applicant, the legal description of the affected property, and that the owner of the affected property desires a waiver to section 13-38(b)(1) or (2). In addition, a notice containing such information shall be posted at Town Hall and on the Town's website.





MAR 17 2020 14:11

**Malabar Comprehensive Plan
2019 Ed.**

Chapter 2: Transportation

Minor Street Classification

Level of Service "D"

Required ROW Width – 70 feet



Existing Roadway System

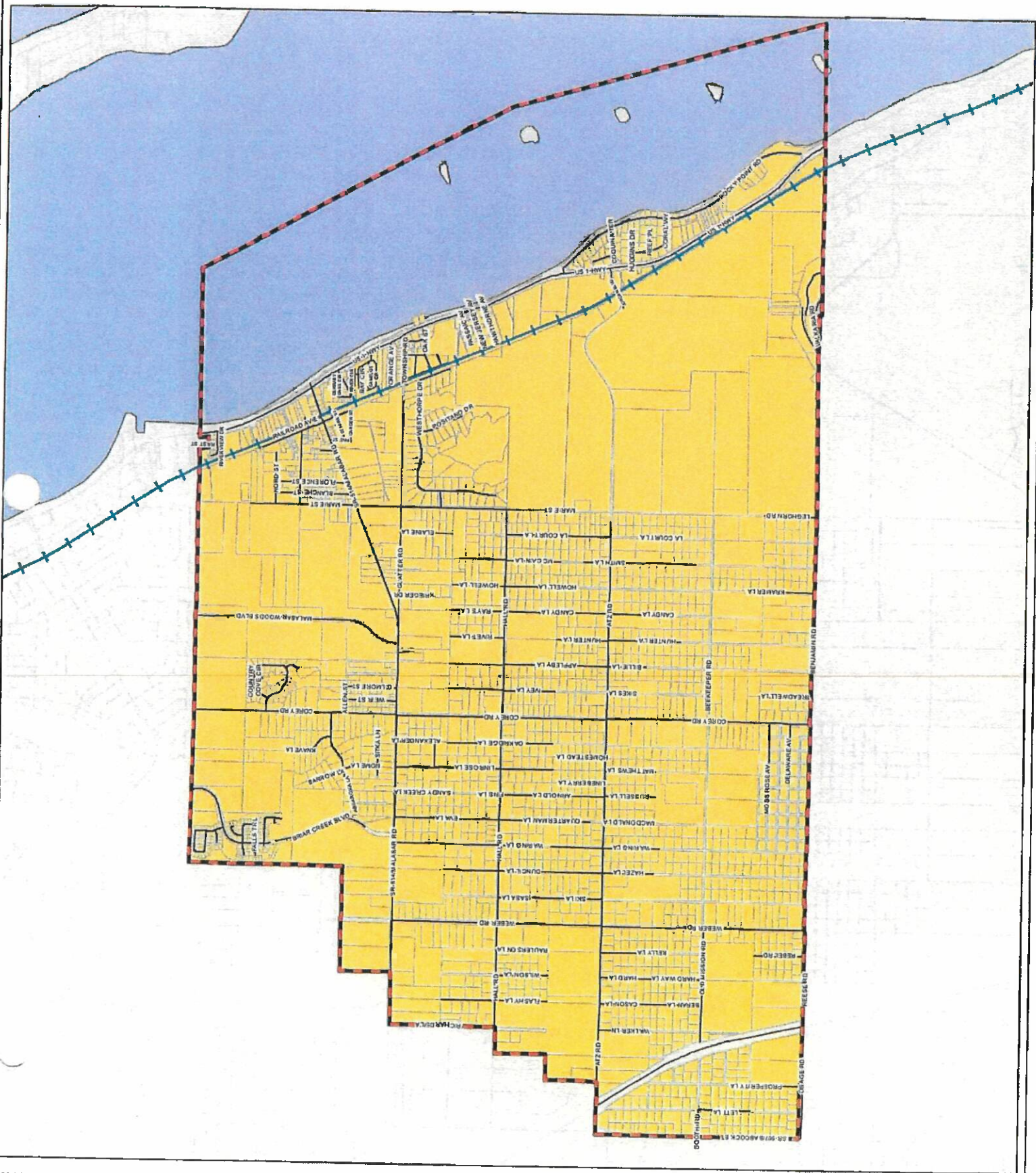
TRN - 1

Legend

- Malabar Town Boundary
- Road
- Florida East Coast Railway

Print Date : June, 2009

Source :
Town of Malabar, 2009





Future Number of Lanes (2025)

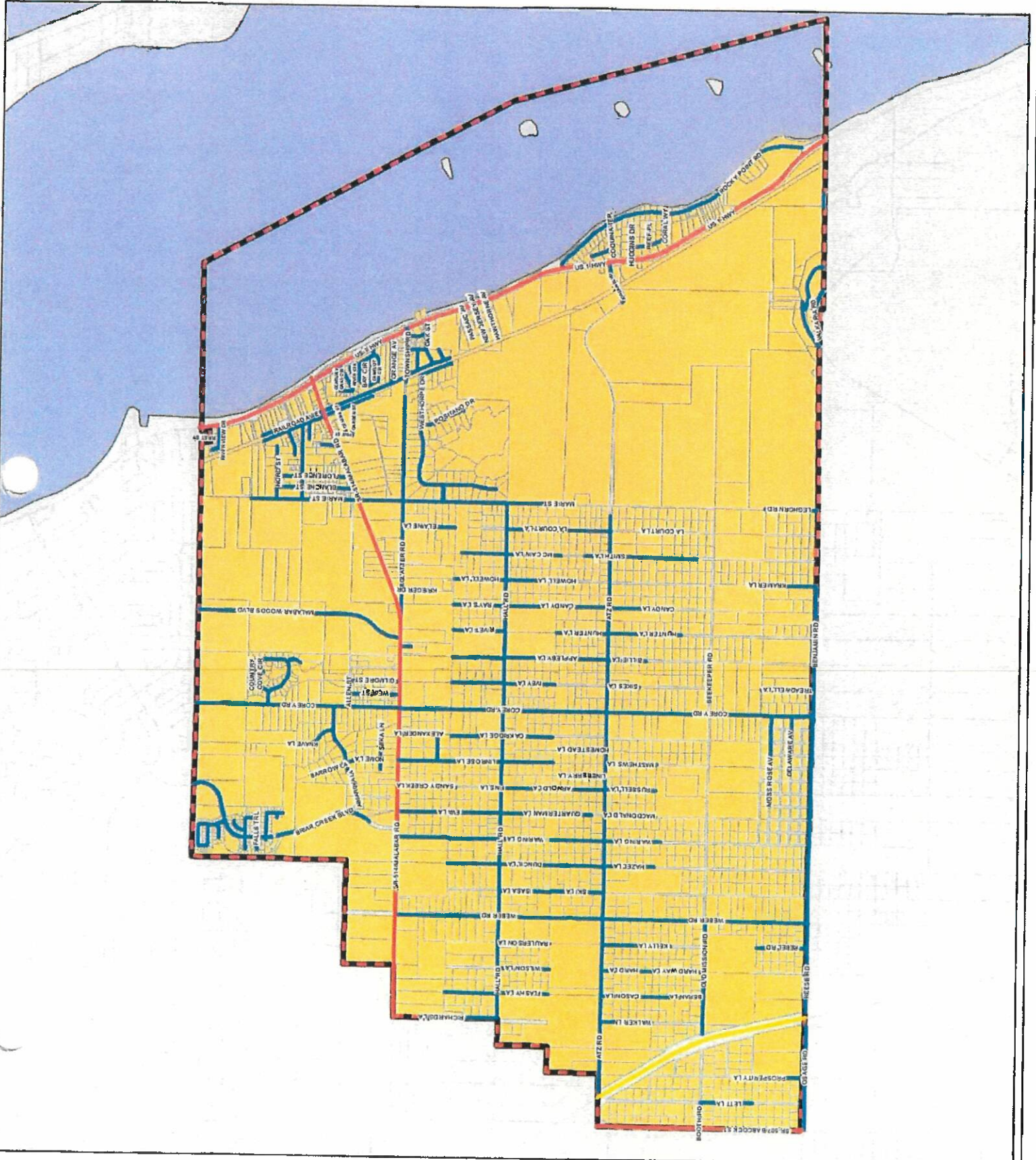
TRN - 6

Legend

- Malabar Town Boundary
- Roads
- Malabar Number of Lanes
 - 2 Lanes
 - 4 Lanes
 - 6 Lanes

Print Date : June, 2009

Source :
FDOT,
Town of Malabar, 2009





Existing and Future Functional Classification (2025)

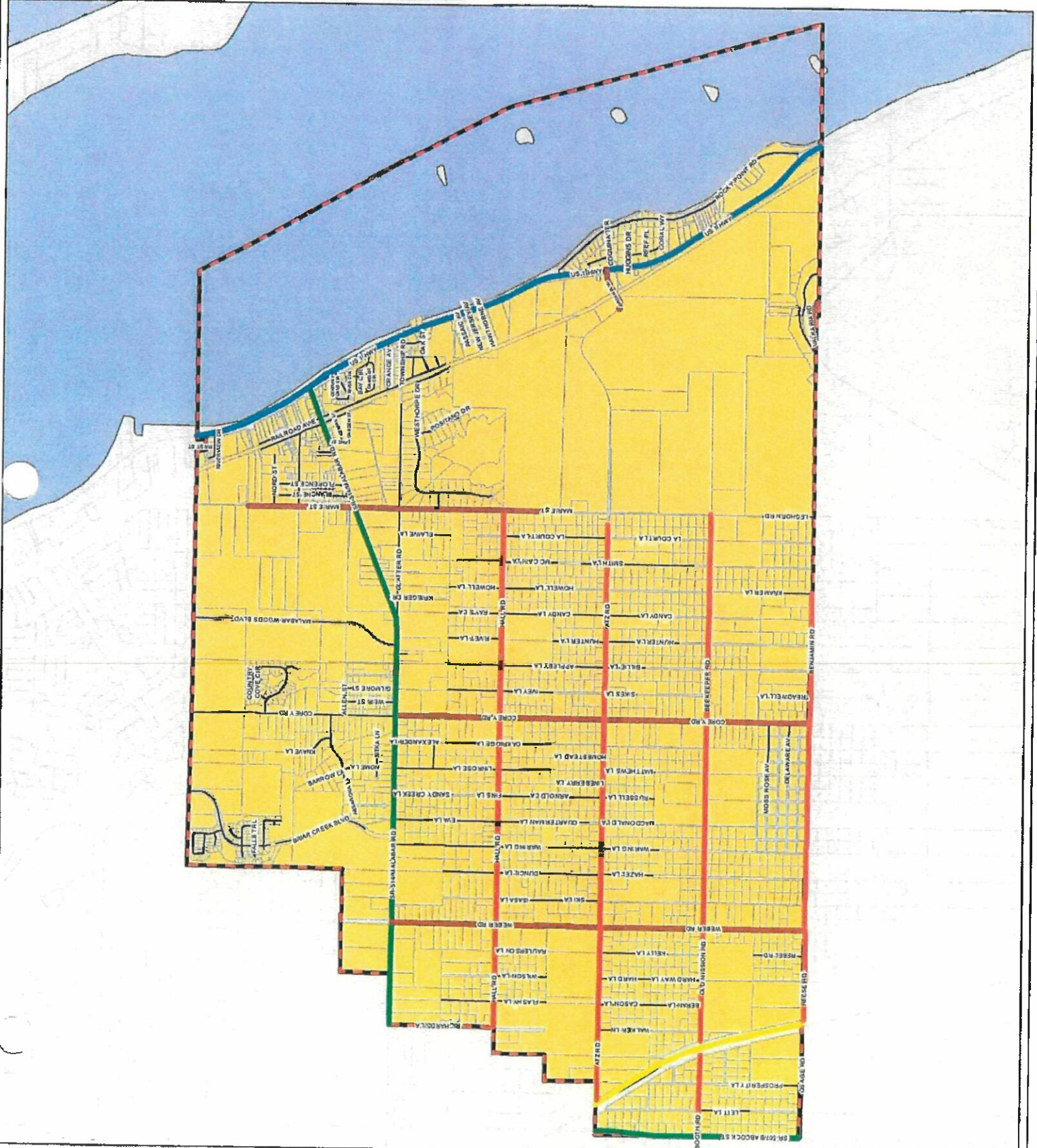
TRN - 3

Legend

- Malabar Town Boundary
- Roads
- Existing and Future Functional Classification
- URBAN: PRINCIPAL ARTERIAL - INTERSTATE
- URBAN: PRINCIPAL ARTERIAL
- URBAN: MINOR ARTERIAL
- MAJOR COLLECTOR
- MINOR COLLECTOR

Print Date : June, 2009

Source : FDOT, Town of Malabar, 2009



Valkaria Road

Valkaria Road serves as Major Collector and runs east-west between SR-507/Babcock Street and US-1. Only a very small portion of Valkaria Road lies within the Town and is used to access Leghorn Lane.

Marie Street

The Marie Street corridor generally extends from approximately 970 feet north of Johnston Avenue south to Malabar Road and should be classified as a Minor Collector due to the lack of right-of-way north of that point.

Marie Street right-of-way proceeds south of Malabar Road to a point 850-feet past Hall Road. It was originally intended to be a Major Collector to connect to Leghorn Lane and reach Valkaria Road to the south. Difficulties with wetland issues, conservation dedications and lack of right-of-way to the south have all contributed to Marie Street being used as a Minor Collector instead of a Major Collector.

Jordan Boulevard

Jordan Boulevard runs east west in the southeast section of the Town and its right-of-way lines up with Atz Road. It was classified as a major collector for this reason. When the Industrial Land Use designation was made for the acreage off Jordan Boulevard to provide for an industrial park, Council directed that Jordan Boulevard should not be improved to Atz Road due to concern that commercial traffic would be brought through the Rural Residential area. The Town still owns the 100-foot wide right-of-way through this area which was subsequently bought by the State for conservation land and the Jordan Boulevard right-of-way has been fenced off. The Town intends to improve this right-of-way for emergency access only. Part of this Jordan Boulevard right-of-way is currently used for trail access into the Jordan Scrub Sanctuary. This roadway should be changed to a Minor Collector.



Minor Collectors

Atz, Hall, Old Mission, and Benjamin Roads are east-west roads. These roads are classified as Minor Collectors. As stated above, Marie Street and Corey Road north of Malabar Road should both be reclassified to Minor Collectors. In addition, Jordan Boulevard should be reclassified to a Minor Collector. LaCourt Lane was improved and used a Minor Collector to avoid the more expensive and challenging road improvements needed for Marie Street in order to connect Hall and Atz Roads. Eva Lane was also cut through from Malabar Road to Hall Road and thus became a Minor Collector.

Local Roads

All other remaining roads are classified as local roads. The local roads serve minimal homes on dead-end roads in the rural residential zoning and can be either paved or unpaved. Local dirt roadways can be paved by Special Assessment as stipulated in Chapter 13 of the Code of Ordinances.

TRANSPORTATION ELEMENT GOALS, OBJECTIVES, AND POLICIES

§2-1 Transportation Goals, Objectives, and Implementing Policies.

This section stipulates goals, objectives, and implementing policies for the Transportation Element pursuant to 163.3177(6)(b), F.S., and §9J-5.007(3), F.A.C.

GOAL 2.1: EFFECTIVE MULTIMODAL TRANSPORTATION SYSTEM

Plan for a safe, convenient, and efficient motorized and non-motorized transportation system which shall be available for existing and anticipated future users of the system.

2-1.1 Objective:

Safe, Convenient, and Efficient Transportation System. Establish a safe, convenient and efficient motorized and non-motorized transportation system through development and implementation of level of service (LOS) standards.

2-1.1.1 Policy:

Level of Service Standards. The Town hereby adopts that following peak hour LOS standards for non FIHS and non-SIS facilities:

- a. US-1: LOS Standard D (FDOT facility)
- b. Malabar Road (SR 514); LOS Standard D (FDOT facility)
- c. Babcock Street (SR 407); LOS Standard D (FDOT facility)
- d. Collector Roadways: LOS Standard D
- e. Paved Local Roadways: LOS Standard D
- f. Unpaved Local Roadways: LOS Standard D

2-1.1.2 Policy:

Level of Service Standards. The Town hereby adopts the following peak hour LOS standards for FIHS and SIS facilities within the Town:

- a. I-95: LOS Standard C (FIHS and SIS facility)

2-1.1.3 Policy:

Master Plan for Road Paving. By 2010 The Town shall prepare and adopt a plan and schedule for paving local streets. The plan shall establish mechanisms for funding road paving projects and the schedule for

management techniques including ridesharing, van pool, and parking strategies.

2-1.1.15 Policy:

Public Involvement. The Town shall encourage public involvement in transportation planning and transportation improvement projects.

2-1.1.16 Policy:

Establishment of Passenger Rail Line. The Town shall support Florida Department of Transportation efforts towards the establishment of passenger rail line along the Florida East Coast (FEC) corridor.

2-1.2 Objective:

Right-of-Way Acquisition. The Town shall protect existing and future right-of-way from building encroachment. By 2010 additional transportation system right-of-way acquisition needs shall be identified and relative priorities for land acquisition shall be established.

2-1.2.1 Policy:

Transportation Map. The Town hereby adopts that Future Transportation System Map. Additional right-of-way (R/W) needs for future roadway and drainage improvements shall be identified based on an assessment to be completed by 2010. The findings regarding specific additional R/W needs for roadway and drainage facility improvements shall be incorporated as an amendment to Future Transportation System Map.

2-1.2.2 Policy:

Standards of Future Road R/W Acquisition. The Town hereby adopts the following minimum standards for road rights-of-way:

- a. Arterial Roadways: 150' R/W
- b. Major Collector Streets: 100' R/W
- c. Minor Collector Streets: 70' R/W
- d. Local Streets: 60' R/W (if swale drainage)
50' R/W (if curb and gutter)

2-1.2.3 Policy:

Mandatory R/W Dedication/Fees in Lieu. The Town shall continue to implement a program for mandatory dedication or fees in lieu thereof as a condition of development approval associated with plats, replats, PUDs, or site plans where such development generate a need for new or improved roadways. The purpose and intent of such program shall be to assure that:
1) adequate road R/W and necessary roadway improvements are dedicated

Malabar Accepted Street List

See page 4
re: Beekeeper



Public Rights-of-Way Accepted Streets as of 9/23/2019*

NOTE: THIS LIST DOES NOT INCLUDE ALL TOWN-OWNED RIGHTS-OF-WAY

<u>Street Name</u>	<u>Width</u>	<u>Length or distance</u>
<u>Absaroka Ln</u>	22'	3200' paved west from Corey Rd— private, Stillwater Preserve SD
<u>Arnold Lane</u>	23'	870' south of Hall Road approved in 2006
<u>Atz Road</u>	23'	2.5 mile paved west from LaCourt Ln to Weber & 21' west to Town limits (and 114 ft dirt east of LaCourt)
<u>Appleby Ln</u>	14'(S)16'(N)	1,322' x 25' north from Hall Rd and 800' south from Hall Rd
<u>Barrow Lane</u>	22'	980' paved from Absaroka – private, Stillwater Preserve SD
<u>Baywood Court</u>	21'	200' paved, Country Cove S/D
<u>Benjamin Road</u>	18'	3,325' x 40' paved east from Corey Road to Kramer Ln
<u>Beran Lane</u>	17'	930' north from Old Mission; Parcel 103 has payback under 90-3
<u>Billie Lane</u>	16'	700' south from Atz Rd.
<u>Blanche Street</u>	20'	1,060' paved north from Malabar Road
<u>Bluff View Place</u>	20'	115' paved west from Pemberton Tr., Brook Hollow S/D
<u>Booth Road</u>	17'	630' east of Babcock Street
<u>Briar Creek Blvd.</u>	23'	2,875' paved south from Malabar Town limit, Brook Hollow S/D
<u>Briar Run Circle</u>	n/a	85' paved west from Briar Creek Blvd, Brook Hollow S/D
<u>Brookshire Circle</u>	20'	334' paved west from Hollow Brook Ln, Brook Hollow S/D
<u>Candy Lane</u>	15'	1322' x 50' north from Atz Road. No records in file of approval south of Atz
<u>Cason Lane</u>	16'	1,330' south of Atz Road
<u>Centre Street</u>	19'	528' between Pine St and W. Railroad Ave.
<u>Century Oak Cr</u>	20'	S/D 1,260 ft. paved
<u>Coral Way</u>	22'	1,550' paved south from Huggins Dr and east to Rocky Point Rd, Coquina Pt S/D
<u>Corey Road</u>	22'	2 mi paved south from Malabar Rd to Town limit & 3,900' paved north of Malabar Rd
<u>Coquina Ter</u>	20'	1,350' paved west from Rocky Point Road, Coquina Point S/D
<u>Country Cove Cir</u>	20'	3,085' paved, Country Cove S/D
<u>Crescent Road</u>	13'	460' x 40' south from Township Road
<u>Delaware Ave</u>	16'	1,293' west from Corey Rd, Melbourne Heights S/D
<u>Duncil Lane</u>	20'(S) 16'(N)	2,440' south from Hall Road and 1,055 ft. north from Hall Road
<u>Elaine Lane</u>	17'	1,310' south from Glatter Road to dead end
<u>Eva Lane</u>	18'	.5 mile from Malabar Road to Hall Road – paved in 2018
<u>Falls Trail</u>	20'	219' paved from Briar Creek Blvd, Brook Hollow S/D
<u>Fins Lane</u>	16'	550' north of Hall Rd (previously known as <u>Mussell Shoal Ln</u>)
<u>First Lane</u>	20'	240' paved north from Riverview Drive, Riverview S/D



Public Rights-of-Way Accepted Streets as of 9/23/2019

NOTE: THIS LIST DOES NOT INCLUDE ALL TOWN-OWNED RIGHTS-OF-WAY

<u>Name</u>	<u>Width</u>	<u>Length</u>
<u>Flashy Ln</u>	19'(N)10'(S)	1,275' north from Hall Road and 530 ft. x 25 ft. south from Hall Road
<u>Florence Street</u>	21'	1,060' paved north of Malabar Road
<u>Garden Street</u>	15'	528' east from Pine Street to dead end
<u>Gator Way</u>	10'	Appx 700' south from Hall Road to Parcel 554
<u>Gilmore Street</u>	15'	220' paved plus 940' dirt north from Malabar Road to Allen St.
<u>Glatter Road</u>	18'(W)16'(E)	925' unpaved east of Marie St and 2,890' paved west of Marie to Malabar Rd
<u>Hall Road</u>	20'	2.5 miles paved from Marie Street west to Richards Ln
<u>Hard Lane</u>	13'	564' south of Atz Road to Parcels 93 and 100
<u>Hard Way Lane</u>	16'	1130' north from Old Mission Road (Parcel 22 has payback under 90-3)
<u>Hawthorne Ave</u>	08'	150' west from Hwy 1
<u>Hollow Brook Ln</u>	20'	2,045' paved north from Briar Creek Blvd, Brook Hollow S/D
<u>Holloway Trail</u>	20'	324' paved west from Briar Creek Blvd, Brook Hollow S/D
<u>Homestead Ln</u>	20'	1,200' paved north from Atz Rd to cul-d-sac, Sugar Pines S/D
<u>Howell Ln</u>	16'(N)18'(S)	1,100' No. of Hall and 928' So. of Hall Rd; Parcel 829 owes payback Ord 03-01.
<u>Huggins Drive</u>	22'	808' paved east from Hwy 1.
<u>Hunter Lane</u>	15'(N) 13'(S)	1,320' north from Atz Rd and 1,500' south of Atz Rd.—see Road payback book
<u>Isasa Lane</u>	16'	730' south from Hall Rd
<u>Ivey Lane</u>	17'	800' south from Hall Road
<u>Johnston Ave</u>	11'	1,164' east from Marie Street – payback complete
<u>Jordan Blvd</u>	70'	1,010' paved west from the center line Hwy.1 (paved divided road)
<u>Kelly Lane</u>	16'	1,483' south from Atz Road
<u>Knave Lane</u>	22'	1000' paved – private, Stillwater Preserve SD
<u>Kramer Lane</u>	19'	1,322' north from Benjamin Rd, payback complete
<u>LaCourt Lane</u>	21'	2,640' south from Hall Rd. to Atz Rd
<u>Leghorn Road</u>	13'	1,000' No of Section 12 from Valkaria Rd Parcel 763 has payback under Ord 01-01)
<u>Left Lane</u>	19'	1,970' south of Booth Road – Parcels 519, 551, 567, 529 and part of 527 owe payback under Ord 91-2)
<u>Lineberry Ln</u>	20'	1,200' paved north from Atz Rd to cul-d-sac, Sugar Pines S/D
<u>Linrose Lane</u>	12'(N) 23'(S)	928' x 25' north from Hall Rd per Council 7/1/19; 1,300' south of Hall Rd to dead end
<u>MacDonald Lane</u>	15'	600' south from Atz Rd (the last 200 feet is a payback under Ord 01-01)
<u>Marie Street</u>	22'	970' x 35' unpaved north from Johnston Avenue and 5,330' (1+ mi) paved south from Johnston Avenue to Hall Road and 1800 ft. x 25 ft. unpaved south of Hall Road to Town owned parcels (17' dirt roadway south of Hall)



Public Rights-of-Way Accepted Streets as of 9/23/2019*

NOTE: THIS LIST DOES NOT INCLUDE ALL TOWN-OWNED RIGHTS-OF-WAY

<u>Name</u>	<u>Width</u>	<u>Length</u>
<u>Marshall Dr</u>	15'	528' north from Malabar Road to dead end
<u>Matthews Lane</u>	21'	1610' south from Atz Rd Parcels, 18, 27, 50 & 51 have payback under Ord. 01-01
<u>McCain Ln</u>	18'(N)16'(S)	1,100' north and 1,450' south of Hall Rd Parcel 859 granted variance in 2005 to improve only 50'. Council voted that Parcel 802 could use same access.
<u>Moss Rose Ave</u>	12'	1,015' west from Corey Rd, Melbourne Heights S/D
<u>New Jersey Ave</u>	09'	528' west from Hwy 1
<u>Nome Lane</u>	22'	920' paved, south from Absaroka – private, Stillwater Preserve SD
<u>Nord Street</u>	10'	528' east from Marie Street
<u>Oak Harbour Ln</u>	20'	338' paved, Country Cove S/D
<u>Oak Tree Place</u>	20'	389' paved north from Falls Trail, Brook Hollow S/D
<u>Oakridge Ln</u>	17'(N)16'(S)	700' x 50' & 350' x 25' north from Hall Rd and 1,130' south from Hall Rd
<u>Old Mission Rd</u>	18'	1,950' west from Weber Road to Beran Ln
<u>Orange Avenue</u>	13'	1,260' west from Hwy 1 to FEC railroad
<u>Osage Road</u>	21'	approved to 1,311' to Prosperity Lane in 2006
<u>Passaic Avenue</u>	14'	782' west from Hwy 1
<u>Pemberton Trail</u>	20'	1,053' paved east from Briar Creek Blvd, Brook Hollow S/D
<u>Pine Street</u>	20'	528' south from Malabar Road to Garden Street
<u>Positano</u>	22'	paved off of Westhorpe Dr – private, Oakmont Preserve SD
<u>Prosperity Lane</u>	16'	930' north from Osage Road in 2006
<u>Quarterman Ln</u>	17'	1850' south from Hall Road to Parcel 791
<u>Raulerson Lane</u>	12'	1270' south from Hall Road – 25' width – approved by Council 9/23/19
<u>Rebel Lane</u>	15'	1000' north from Reese Road
<u>Reef Place</u>	20'	510' paved east from Coral Way, Coquina Pt S/D
<u>Reese Road</u>	18'	685' x 25' west from Weber Rd to Rebel Ln
<u>Richards Lane</u>	10'	807' x 25' north from Hall Rd
<u>Riverview Drive</u>	20'	780' paved west from Hwy 1, Riverview S/D
<u>Rivet Lane</u>	13'	700' x 25' north from Hall Road
<u>Rocky Point Rd</u>	22'	7,590' paved (was old Hwy 1)
<u>Russell Lane</u>	16'	400' south from Atz Road
<u>Samantha Lane</u>	16'	Council approved name change to Taylor Lane in 2019 for 1200' So of Hall Road (Parcel 500 may have a payback under Ord 03-01 for 300')
<u>Sandy Creek Ln</u>	19'	1,500' south from Malabar Road
<u>Shiflett Lane</u>	17'	528' south from Malabar Road to dead end



Public Rights-of-Way Accepted Streets as of 9/23/2019*

NOTE: THIS LIST DOES NOT INCLUDE ALL TOWN-OWNED RIGHTS-OF-WAY

<u>Name</u>	<u>Width</u>	<u>Length</u>
<u>Ski Lane</u>	11'	564' north of Atz Road – plus 240' -- payback under 91-2
<u>Smith Lane</u>	20'	paved in 2018 w/ special assessment. (the first 475 ft. is no payback; the next 1169' is a payback under 91-2; the next 600 ft. is a payback under 01-01)
<u>Steeplechase Cir</u>	20'	358' paved west from Briar Creek Blvd, Brook Hollow S/D
<u>Stika Lane</u>	22'	840' paved – private, Stillwater Preserve SD
<u>Township Road</u>	20'	1,056' <i>paved</i> east from FEC railroad to Hwy 1
<u>Waring Lane</u>	18'(N)21'(S)	1,312' north of Atz Rd and 2,400' south of Atz Rd (Paybacks complete)
<u>Weber Road</u>	23'	2 miles paved south from Malabar Road to Town limits
<u>Weir Street</u>	14'	1,160' north from Malabar Road to Allen Street
<u>W Railroad Ave</u>	20'	1200' paved north of Malabar Rd and 630' paved south of Malabar Road
<u>Westhorpe</u>	23'	paved east from Marie Street – private, Oakmont Preserve SD
<u>Wilson Lane</u>	16'	1,052 ft. south from Hall Road

Public Right-of-way named only for fire-fighting location purposes:

↘ Bee Keeper Ln 12' East from Corey Road - NOT AN ACCEPTED STREET:

Public Rights-of-way Not improved/Not accepted but have homes on them

Candy Ln 8' South of Atz – no record in file of any improvement

Christian Ln 10' Was Prospect Ln. Name change approved in 1/2011 but not improved

Private Easement used to access single family homes:

Alexander Lane 13' not maintained by the Town but accesses multiple homes

Latest Updates:

9/23/19 – added Raulerson Lane to accepted list.

11/25/19 – completed width measurements of roads

NOTE:

TOWN OF MALABAR
MEMORANDUM

Date:	June 29, 2020	Memo: 20-CE-10
To:	Debby Franklin, Town Clerk	Project No.
From:	Morris Smith, Town Engineer	Variance No.:
Ref:	Beekeeper Lane Development – Mr. Adam Hayward	

I have reviewed the Beekeeper Right-of-Way historical document package you delivered to me.

On Friday, June 19th, I made a walkthrough of Beekeeper Lane from Corey Road to a point approximately 1,320 feet, east of Corey Road. During that walk through I took photos to document the present-day condition of Beekeeper Lane.

What I observed on Friday June 19th was reinforced by the narrative I read from the Town's historical documents.

There exists two (2) manmade ditches, parallel to the travel way, one on either side of the travel way, for approximately the first 200 feet of Beekeeper Lane. There is a wooden power pole on the south side of the travel way that marks the east termination point of the ditch on the south side of the Beekeeper Lane.

The man-made ditch, parallel to the travel way, on the northside of Beekeeper has a easterly termination point approximately 635 feet east of Corey Road.

I observed that all other areas that contained standing and flowing surface water were naturally occurring areas. Many of those natural areas seem to have been bisected and partially filled in by the travel way that has been created.

While walking I observed many sloppy, mud-hole, boggy areas on the travel way, one can see that those areas are flanked by wetlands, inside and outside of the dedicated

TOWN OF MALABAR
MEMORANDUM

roadway rights-of-way. The edges of the travel way are rutted, with banks pushed higher than the wetland areas. As the water in the wetlands rise it overtops these rutted banks causing the boggy areas.

I reviewed the plat showing lands of the Florida Indian River Land Company, recorded February 27th, 1912 at Plat Book 1 Pages 165A and 165B, the legal descriptions for the two (2) parcels west of Mr. Haywards parcel as well as the two (2) parcels south of and west of Mr. Haywards property, to validate the roadway reservations in the legal descriptions for each of these neighboring parcels.

The legal descriptions for these parcels do not add any additional lands to the 20 feet wide roadway reservations that are shown on the plat for the subdivision.

These parcels are as follows:

1. Official Record Book 4045, Page 1242, L'Esperance to Jones,
2. Official Record Book 6037, Page 1140, Mission Road Property Holdings, Inc to Glorioso and Sheppard,
3. Official Record Book 5356, Page 0531, Hartman to Hartman Building Corp. and
4. Official Record Book 4817, Page 0313, Norma M. Defuria Trust to Wainuskis.

Parcels 1 and 2 above parcels would have to dedicate the South 35 feet of their property and Parcels 3 and 4 above would have to dedicate the North 35 feet of their property. These dedications would provide the 70 feet dedicated right-of-way for this designated collector road.

These additional dedications would follow the example already establish in legal description for Mr. Hayward's parcel. Mr. Haywards legal description closes with the statement "and less the south 35 feet for road, utility and drainage right of way."

TOWN OF MALABAR
MEMORANDUM

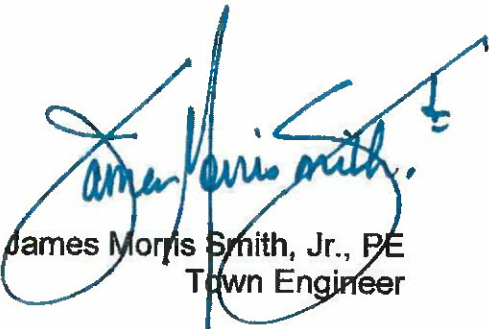
After the required right-of-way issue is resolved, Mr. Hayward's land surveying and civil engineering consultants can begin their data collection, calculations, design and permitting of a Type "B2" roadway, extending from the east edge of pavement of Corey Road to the southeast corner of Mr. Hayward's property. The Type "B2" roadway requires a minimum 60 feet of dedicated roadway right-of-way.

This Type "B2" roadway design shall meet all the design and permitting requirements of the Town of Malabar Land Development Code (Town), the St. Johns River Water Management District (SJRWMD) and the Florida Department of Environmental Protection (FDEP).

I recommend that the applicant visit the newly constructed Grace Lane roadway, approximately three tenths of a mile, east of Corey Road, connected to Benjamin Road, to observe what construction standards the Town, the SJRWMD and the FDEP will require for a successful roadway construction project.

I do not support the Road Improvement Waiver request for which Mr. Hayward has applied.

Very Truly Yours,


James Morris Smith, Jr., PE
Town Engineer

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

JULY 06, 2020 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 the meeting to order at 7:30 pm. Mayor led P&P.

2. **ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET, excused

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DAVID SCARDINO

DANNY WHITE

TOWN MANAGER: (TM)

MATT STINNETT

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

3. **APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:** Clerk had asked the Chair to allow Reso 10-2020 be added. It is a preliminary requirement before we can legally proceed with the Special Assessment Map and Assessment List and provide for a comment period.

4. **CONSENT AGENDA:**

4.a. Regular Town Council Mtg Minutes of 6/15/2020

MOTION: CM White / CM Ball to approve consent agenda.

VOTE: All Ayes. Motion carried 4 to 0.

5. **ATTORNEY REPORT:** Reported on Code Enforcement July 1 SM hearing. Magistrate found in favor of Town and gave 15 days for compliance or daily fines for each of three violations can be assessed in addition to administrative fees. After three months of noncompliance we can foreclose on property.

6. **BCSO REPORT:** Lt. Cline was not present.

7. **BOARD / COMMITTEE REPORTS:**

7.a. **Drew Thompson, Chair, T&G Com:** not present no report

7.b. **Eric Bienvenu, Chair Park & Rec Board:** not present

7.c. **Wayne Abare, Chair, P&Z Board:** not present

8. **STAFF REPORTS:**

8.a. **MANAGER:** Reported that one of the FD Lt. has fallen ill – not COVID-19 related, but not doing well. He has brought on two volunteers as temp employees.

8.b. **PW DIRECTOR:** Written Report

8.c. **FIRE CHIEF:** excused

8.d. **CLERK:** Only other thing is the upcoming FLC annual Conf in August. We need a voting delegate. Could I get consensus for it to be the SCLC delegate? The conference voting will be done electronically. Consensus to have CM White be the voting delegate.

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

10. PUBLIC HEARINGS: 3

10.a. Second Reading: Change Qualifying Dates for 2020 Election and beyond (Ord 2020-05)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REPEALING AND REPLACING ORDINANCE 2019-10 AND AMENDING SECTION 2.03 OF THE TOWN CHARTER RELATING TO THE CANDIDATE QUALIFYING PERIOD; AMENDING SECTION 2.04 OF THE TOWN CHARTER RELATING TO THE MAYOR QUALIFYING PERIOD; 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. Open Public Hearing: none. Closed Public Hearing.

MOTION: CM Vail / CM Ball to adopt Ord 2020-04. Discussion: none

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, excused; CM Scardino, Aye; CM White, Aye. Motion carried 4 to 0.

10.b. Second Reading: Amend Chapter 13 re: Special Assessment Process (Ord 2020-06)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA TO AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES; PROVIDING FOR A COST SHARE IN THE PAVING OF IMPROVED AND ACCEPTED DIRT ROADS THAT HAVE MET THE REQUIREMENTS FOR A SPECIAL ASSESSMENT IN SECTION 13.52.(2)b.; PROVIDING FOR NEW SUBSECTION 13.52.(2)c.; PROVIDING FOR THE FUNDING SOURCE FOR THAT COST SHARE; PROVIDING FOR SEVERABILITY, CODIFICATION; CONFLICTS AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 10.b.

Ord read by title only. Open Public Hearing: none. Closed Public Hearing.

MOTION: CM White / CM Vail to adopt Ord 2020-04. Discussion: CM White – said of the eight that replied regarding paving Hunter Lane, two may not have agreed without the Town doing a cost share.

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, excused; CM Scardino, Aye; CM White, Aye. Motion carried 4 to 0.

10.c. Public Hearing on Road Improvement Waiver Request – Right of Way known as Beekeeper Lane

Title read by title only. Open Public Hearing: none. Closed Public Hearing.

A REQUEST FOR A WAIVER TO THE ROAD IMPROVEMENT REQUIREMENTS IN CHAPTER 13 OF THE MALABAR CODE OF ORDINANCES REGARDING THE UNIMPROVED/UNACCEPTED RIGHT OF WAY EAST OF COREY ROAD KNOWN AS BEEKEEPER LANE IN SECTION 12, TOWNSHIP 29 AND RANGE 37 WITHIN THE TOWN OF MALABAR. REQUEST BY ADAM HAYWARD.

Exhibit: Agenda Report No. 10.c.

Chair called applicant to podium to state the request. Adam Hayward, 2735 Woodside Ave, Winter Park FL. Seeking a waiver because if it is developed as the 70' roadway, it will cut into a garage of an existing home facing Corey. It exists as 12' now and some of it is wider and it is currently used as a travelway. If he is required to contact the other property owners facing Beekeeper and ask them to dedicate ROW to the Town; there is no incentive for them to dedicate a portion of their parcels. He has listened to the Malabar Town Road workshop where the Attorney discussed the problems in defending the challenges to the Town's ROW requirements when there are so many existing approved roads that do not have such widths.

MOTION: CM White / CM Vail to approve for discussion.

CM Vail said you must stand firm on the requirements.

TM said he understands the issue of having to widen the road into a minor collector – this ROW, when improved and approved, will serve a large number of potential parcels for future property development. This is intended to be a similar classification of roadway as Hall and Atz Roads. While we go through this discussion, we must consider the potential impacts of having a narrow travelway now may be more consequential for future development. CM White said this gentleman is required to improve the road – should the Town ask for the additional ROW needed instead of this person. Clerk explained the road improvement regulations. The Town has the authority to require the needed additional ROW to be dedicated when a parcel owner applies for a development permit. If these are vacant lots facing Beekeeper, they have not applied for a development permit. CM White said that seems like a short coming. You can't just tell people to give part of their land. Clerk explained the discussion at the road workshops for Council to consider reducing the widths for the road classifications. That would give direction to staff. Attorney said such a change would also require a Comp Plan Large Scale Amendment because it would change the text of the Transportation Element. It would also first have to go to P&Z. CM White / CM Vail withdraw the motion.

Council discussed the need to finalize the work they began on updating the Transportation Element. Attorney Bohne stated that the amendment would require a large-scale amendment (LSA) to the Comprehensive Plan and would need to be reviewed by Planning and Zoning.

Council discussed the need to provide the reasonable and defensible guidelines for roadway development before, so future residents/taxpayers are not burdened with court costs. The regulations need to provide adequate width for travelway, drainage, emergency response, and for collectors to provide proper connections to local lanes. Council consensus was to require a property owner to build to the end of the parcel to be developed to prevent some of the issues they are dealing with now.

MOTION: CM Ball / CM Vail to "table" the waiver request for a three-month period to provide additional time for Council to consider amendments to the Transportation Element of the Comp Plan and Land Development Regulations for streets.

11. UNFINISHED BUSINESS/GENERAL ORDERS:

12. ACTION ITEMS:

ORDINANCES FOR FIRST READING: 0

RESOLUTIONS: 1 (added at beginning of meeting)

12.pre. Adopt Resolution 10-2020 Special Assessment re: Paving Hunter Lane

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AUTHORIZING, DECLARING AND CREATING A SPECIAL ASSESSMENT FOR THE HARD SURFACING OF HUNTER LANE, NORTH OF ATZ ROAD FOR A DISTANCE OF 1,100 FEET; PROVIDING FOR THE ESTIMATE OF TOTAL COSTS OF SAID IMPROVEMENTS; DESIGNATING THE PORTION OF THE IMPROVEMENT TO BE PAID BY SPECIAL ASSESSMENT; DESIGNATING WHEN THE SPECIAL ASSESSMENT SHALL BE PAID; DESIGNATING THE LANDS UPON WHICH THE SPECIAL ASSESSMENT SHALL BE LEVIED; PROVIDING FOR CREATION OF AN ASSESSMENT PLAT AND A PRELIMINARY ASSESSMENT ROLL; PROVIDING FOR PUBLICATION AND NOTIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 12.pre. added item

Reso read by title only.

MOTION: CM White / CM Scardino to adopt Reso 10-2020 as submitted. Discussion: Clerk explained that this is the preliminary step required before developing the assessment map and roll and advertising the adopted resolution to start the comment period.

ROLLCALL VOTE: CM Ball, Aye; CM Vail, Aye; CM Rivet, excused; CM Scardino, Aye; CM White, Aye. Motion carried 4 to 0.

MISCELLANEOUS: 2**12.a. Form DR-420 – Tentative Maximum Millage and Public Hearing Date****Exhibit: Agenda Report No. 12.a.**

MOTION: CM Ball / CM Vail to set the tentative maximum millage at 2.3810 and the date for the first PH on September 3, 2020. This is based on the prior FY19/20 millage of 2.2680 and the calculated current year rolled back rate (RBR) of 2.1627.

VOTE: All Ayes. Motion carried 4 to 0.

12.b. Clarification on Land Use Designation & Zoning Consistency**Exhibit: Agenda Report No. 12.b.**

Discussion: Mayor read his statement. It was the Planning and Zoning Board's understanding that a property owner could develop under the existing zoning or change to match the FLUM designation. The intent was to make it easier but not mandatory. Attorney Bohne explained that existing developed properties could continue to exist under the existing zoning and would be "grandfathered" in. Buyer is motivated to change the land use map.

Vacant land would need to request a zoning change to match the FLUM or both a zoning change and land use designation change to go to another land use.

Mayor asked why they are making this change. Atty Bohne said buyer wants assurance that there will be no conflicts in the future. The existing owner would have no problem proceeding under the "grandfather" clause. Clerk explained that this is for clarification of why this will be before P&Z on 7/22/20 for a public hearing and then to Council on 8/3/20 for a public hearing in order to send to the State and request expedited review. If there are no adverse comments, after the review, Council can advertise the ordinance for second reading and final adoption.

CM White is OK with the new buyer's concern for consistency. He asked about all the other properties that the Town changed the land use designation. This could crop up again and again. Current owners of vacant land don't have the option to develop if the zoning is not consistent with the land use designation. Existing, developed properties can continue under their current zoning.

CM Vail said similar requests have the potential to come before them again. Yes.

13. DISCUSSION/POSSIBLE ACTION: 0**14. PUBLIC COMMENTS: General Items (Speaker Card Required) none:****15. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Ball: Referred to the Malabar FD Lt with medical issue – keep him and his family in your thoughts and prayers

CM Vail: nothing

CM Rivet: excused

CM White: Do we have any FD staff with confirmed COVID-19? TM said yes, one volunteer and three paid staff. CM White relayed the incident last Tuesday when he was in Publix and two members on duty, in uniform were inside with no masks. He then came by Town Hall to sign bills and saw the two cleanings that were done at the fire house. If we are going through that kind of effort for the FD, they need to take some personal responsibility to wear masks.

TM said they are supposed to wear the masks while on duty. TM said the issue was addressed and policies reiterated. They adjusted those policies after the first positive case to require masks and arriving and leaving differently to avoid cross contamination. They are not currently bringing in volunteers – any time they are in close quarters they are to be masked

CM Scardino: agreed with him. Florida is reporting 10K a day.

Mayor: nothing

16. **ANNOUNCEMENTS:** Openings on T&G and Park and Rec Bds.
17. **ADJOURNMENT:** There being no further business to discuss and without objection, the meeting was adjourned at 9:00 P.M.

BY: original signed
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 7/20/2020

MALABAR COUNCIL WORKSHOP MEETING

July 27, 2020

7:00 PM

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

A. CALL TO ORDER:

The meeting was called to order at 7:00 pm with P&P led by Chair Mayor Reilly.

B. COUNCIL:

COUNCIL CHAIR:	MAYOR PATRICK T. REILLY
VICE-CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DAVID SCARDINO
	DANNY WHITE
MANAGER:	MATT STINNETT, excused
BLDG DEPT MANAGER	DENINE SHEREAR
ATTORNEY:	KARL BOHNE, arrived at 7:30
CLERK/TREASURER:	DEBBY FRANKLIN

Also present: Engineer Morris Smith

C. ROAD WORKSHOP FOR DEVELOPING ROADWAYS

Chair said the purpose of the meeting was to gain consensus on the points brought up at earlier workshops to finalize those points for Staff.

First point: widths for the various road types. Staff had earlier suggested reducing the widths but now stands firmly behind the Manager's recommendation to keep them as stated in the Comp Plan and Code Book:

Local lanes – 60' if dirt road; 50' if paved with curbs and gutter

Minor Collector – 70'

Major Collector – 100'

Consensus to not back down on these needed dedications. Continue to require the ROW dedication as a prerequisite to having a building permit issued. Eventually we may have all the ROW needed when the Town needs it to accomplish a Public improvement such as emergency access, fire truck, utility, solid waste, traffic control, or for increasing capacity.

CM Ball said that if they dedicate it, it comes off their tax bill, but they can still use it until the Town is ready to make an improvement, so it is a benefit for the property owner.

CM Vail mentioned for those that need a little encouragement or maybe the Town needs it before the vacant parcel owner is ready to build, we could offer to pay for the needed ROW based on the current value of the parcel. Calculate it on the square foot cost of the parcel.

Regarding Beekeeper – continue to require the ROW dedication but allow a property owner to build to the 50' ROW dirt road standard. CM Vail said to try and make it a consistent 22' travelway. Council discussed the Exhibits B-2 through B-6 and agreed to Exhibit B-4 for the "typical" dirt road improvement. If the Town has been granted the ROW dedication the property owner can build a typical dirt road using this Exhibit B-4. As other property owners develop, they too can improve to the similar standard. At the point that other road(s) are connected or there are enough homes on the street, the Town will have the responsibility to convert the "dirt road" to a paved collector.

Add this language to Chapter 13.

Exhibit B-5 and B-6 were adopted in Resolution 48-2010 and only intended for local lanes that serve few homes and do not collect to more than one other street. So, they would not be allowed for collectors. Use Exhibit B-4 for typical improvement requirements.

The reason for the needed ROW dedication is to be under Town's ownership when storm water, traffic, life safety and utility improvements are needed.

Mayor summarized the discussion for the benefit of the Attorney; keep current ROW requirements, continue to require dedications, require a property owner to improve to the Exhibit B-4 standard,

Attorney said the more reasons we can state for needing the ROW dedication the better, to defend it, if challenged. CM Ball said the purpose of the Comp Plan Transportation Element is to ensure the Town has the ROW needed when infrastructure improvements in the future are planned. If we are specific in the needs, even if the improvements won't be done immediately, we can defend the need for them.

CM Vail said the needs are stated for planning for the long view. As more houses are built, more fill is brought in creating more eventual run-off.

Mayor wants Morris involved. CM Vail asked if Morris could develop an overall map showing the current ROW widths and establishing the centerline. Morris said Florida doesn't require recording of all dedications. It would be an extensive undertaking. He could use the Property Appraiser's (BCPAO) maps. Franklin explained that we also use BCPAO maps for they are for tax purposes – we use them only for reference. We require surveys for verification of the ROW and property lines. Franklin then explained how a Building Permit for construction requires a survey showing the adjacent ROW and the property lines. The Building Department then knows how much ROW is needed for the dedication. It is also on the checklist used for new construction. Different roads require different ROW amounts and for corner lots, or some larger lots, ROW dedication may be requested from one, two, three or even all four sides (Melbourne Heights). Consensus to not have Morris develop an overall ROW needs map.

CM Rivet said we should always ask for the voluntary dedication first and use eminent domain as a last resort only if it is needed right away. The Town would have to pay current market value. Morris explained the example is Grace Lane dedicating ROW in order to build multiple homes. Morris described the recent ROW improvement for 25' that provided engineering for a sloped roadway with drainage to a ditch on only one side. The Mayor said that is an "un-typical" design. The Exhibits in the road improvement regulations are for "Typical" road improvements.

CM Vail asked Karl about liability to Town if you ask for the dedication and not use it right away. Karl said we discussed this at staff level – SW and drainage, emergency vehicles, traffic patterns, utility and sanitation. The more reasons the better to prove it. Still need to boost up our rationale nexus on what we are trying to accomplish. Karl referred to the earlier lawsuit and we were probably ill prepared. CM Rivet said we could have defended it better; it is all hindsight now, but that is the Attorney's opinion. CM Vail said sufficient basis justification is the drainage as it is developed and constructed. Get it now.

CM Vail said when you have an undeveloped ROW and the person four lots in wants to develop and dedicates the needed ROW, the Town should try and ask for the needed ROW from the first three lot owners. Karl explained the triggering mechanism is the desire to pull a building permit. If they never come in to pull a permit, the Town may need to "take" it.

Karl asked about the road payback time limit. GV limits their to 15 years. Consensus of Council to not limit the requirement for payback. Clerk asked Atty to think about a better Council certifying the costs (which creates the per linear foot improvement cost for payback purposes) and identifying at that point which other properties would be liable to the road payback. In a document that could be recorded.

Staff currently used Parcel ID numbers but if parcels are merged or separated, that information changes. Attorney said we could spell it out and incorporate the process into a Town Resolution that would identify those parcels using either the tax account numbers or legal Parcel ID that would be required to pay a road payback. Then the Resolution could be recorded in the Brevard County Clerk of Courts. Anyone doing a title search or applying for title insurance would discover this "encumbrance".

Mayor then referenced the email from the Brook Hollow person regarding repaving. Franklin included it in the package. Franklin explained that the memo handed out last year at road workshop explained a process Highland County used to "grade" their paved roads. Scheduling the repaving of such roads, based on a graded criterion would support the reasoning for putting it in a future budget.

CM Ball said Riverview Drive and First Street were both repaved using the Special Assessment process. Council discussed various methods to repave. Franklin said it was only for discussion at this point. Town has been setting aside surplus reserves for repaving for several years.

Karl gave the example of how Town could do special assessment to pave the roads. He also strongly suggested that the Town change the language to put the maintenance responsibility on the HOA and have that language in the Covenants.

Amend the subdivision Sections of the Code (Art XIV, XVII, XIII) to make it the responsibility of the subdivision in their covenants to maintain the paved roads in the future. If they fail to do so, the Town could step in and do it and use the Special Assessment process to pay for it. It would be for the health safety and welfare.

Morris wants to circle back to why we need to ask for ROW. He explained that St. Johns River Water Management District requires the same type of construction whether the applicant is constructing a dirt road or a paved road. Council asked him to provide those details. Morris said that is why the swales are designed so big; to handle stormwater runoff as if it were paved. Attorney said that information would be good to reference in the Code.

Chair Reilly, without objection, adjourned the workshop meeting at 8:22pm.

BY: _____ original signed _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Approved: 8/03/2020

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a

Meeting Date: February 1, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Ordinance 2021-01 Amending Table 1-19.18 of the Land Development Code, Article XIX – Signage, Section 1-19.18 entitled District Sign Regulations.

BACKGROUND/HISTORY:

Amending the Land Development Code, Article XIX Signage, Section 1.19.18 District Sign Regulations, Table 1-19.18, to change the maximum square footage area of a permitted sign, within Residential Zoning Districts from 32 square feet to 16 square feet and Non-Residential Zoning Districts from 3 square feet to 32 square feet for a detached sign, for sign type General Outdoor Advertising for each zoning districts.

P&Z Board Meeting Minutes of 12/15/2020 in consideration of item 7.b. Amending Article XIX Signage, Section 1.19.18 District Regulations Residential vs Non- Residential concerning square footage: Motion Passed Unanimous

The Board discussed the signage review, Vice- Chair Ritter said that only the Commercial was reviewed not the Residential in both it is 32 sq. ft. Chair Abare reviewed the background on the Commercial VS Non-Commercial sign regulations that might have been reversed.

Interim TM Morrell explained during elections a large sign (32 sq. ft) was placed on a residential site. She looked at the Code, refers to “general outdoor” signage and asked about a permit but it is an election sign, so it falls outside the Code. Town Table 1-19.18 shows it is Residential 4ft x 8 ft = 32 sq. ft and Non-Residential 10 sq. ft or 3 sq. ft. It was brought before Town Council and they said to send back to the PZ Board to discuss and review. The Commercial would need more signage area and the Non-Commercial would need less. A suggestion is to reverse the Residential VS Non-Residential size, it is for your discussion.

The Board discussed the Signage Table and explained that the PZ Board only went over the Non-residential. Attorney Bohne explained the Amendment for signage prior only had to do with the sign “Content” only. The sign regulation has been there and was never changed since probably the sign code was drafted.

The consensus of the Board:

- Board members Foster and Dial: 16 Residential 32 Non- Residential 5
- Board members Ritter and Hofmeister 10 Residential 32 Non- Residential
- Board members Shortman and Rinehart 16 Residential 32 Non- Residential

Motion: Hofmeister/ Ritter recommend to Council to change the residential signage to 16 sf and non-Residential signage increases to 32 square feet. Roll Call Vote: Foster; Aye, Dial; Aye, Ritter; Aye. Hofmeister; Aye, Abare; Aye **Motion passed 5 to 0**

ATTACHMENTS:

Ordinance 2021-01

ACTION OPTIONS:

Action of 1stt reading of Ordinance 2021-01

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.

WHEREAS, the current Town of Malabar Code of Ordinances, Land Development Code, Article XIX – Signage states that the maximum area allowed for General Outdoor Advertising in Residential Zoning Districts is 32 square feet; and

WHEREAS, the maximum area allowed for General Outdoor Advertising in Non-Residential Zoning Districts is 3 square feet for detached; and,

WHEREAS, the Town Council recognizes the need to adjust the maximum general outdoor advertising area proportionate to the zoning district activity for residential and non-residential zoning districts.

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

SECTION 1. Section 1-19.18. - District sign regulations of the Malabar Code of Ordinances, Land Development Code, Table 1-19.18 is hereby amended to read as follows:

“(1) Sign Regulations Within Residential Zoning Districts.

Sign Type:	Accessory	Construction	Directory	Directional
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	1	1	1
Maximum Area	4 sq. ft.	32 sq. ft.	10 sq. ft.	3 sq. ft.
Maximum Height	10 ft.	Detached: 10 ft. Wall: Roof line of building	10 ft.	Detached: 3 ft. Wall: 12 ft.
Placement	Must observe all yard regulations	Front setback: 10 ft. Side and Rear: 25 ft.	Must observe all yard	Non-Restricted

Sign Type:	Accessory	Construction	Directory	Directional
			regulations	
Illumination	None	None	Indirect	None
Special Regulations	Permitted only in conjunction with a permitted home occupation. See Footnote 1.	Must be removed immediately upon completion of construction or occupancy	None	None

Sign Type	Future Improvement	General Outdoor Advertising
Construction Class	Detached	Wall or Detached
Maximum Number	1	1
Maximum Area	10 sq. ft.	32 <u>16</u> sq. ft.
Maximum Height	10 ft.	10 ft.
Placement	Front setback: 10 ft. Side and Rear: 25 ft.	No signs to impede vision at any intersection
Illumination	None	None
Special Regulations	None	See Footnotes 1 and 2

“(2) Sign Regulations Within Non-Residential Zoning Districts.

Sign Type	Accessory	Accessory	Temporary
Construction Class	Wall	Detached, Marquee, and Projecting	Snipe/Signs
Maximum Number	3	2 total from this group	4
Maximum Area	10% of the wall area, and no more than 60 sq. ft. of cumulative area	60 sq. ft. total cumulative area	4 sq. ft. each
Maximum Height	Roof line of building	Detached: 25 ft. Others: Roof line of building	Roof line of building
Placement	Non-Restricted	Must observe yard	Must observe

Sign Type	Accessory	Accessory	Temporary
		regulations and Front setback: 10 ft.	yard regulations
Illumination	Direct, Indirect	Direct, Indirect	None
Special Regulations	See Footnotes 1, 3, and 4	See Footnotes 4 and 5	See Footnote 7

Sign Type	Construction	Directory	Directional	General Outdoor Advertising
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	2	2	1
Maximum Area	32 sq. ft.	Sum of 30 sq. ft.	3 sq. ft. each	Detached: 3- 32 sq. ft. Wall: 10 sq. ft.
Maximum Height	Detached: 10 ft. Wall: Roof line of building	10 ft.	Detached: 3 ft. Wall: 10 ft.	10 ft.
Placement	Front Setback: 10 ft. Rear and Side: 25 ft.	Must observe all yard regulations	Non-Restricted	Front setback: 10 ft. Rear and Side: 25 ft.
Illumination	Indirect	Indirect	Indirect	Indirect
Special Regulations	Must be immediately removed upon completion of construction or occupancy	None	None	See Footnotes 1 and 2

SECTION 3. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida that the provisions of this Ordinance shall be made a part of the Charter of the Town of Malabar, Florida; and codified into the Municipal Code and any section or paragraph may be renumbered or re-lettered to accomplish such intention.

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, such decision shall not affect the validity of the remainder hereto as a whole or part thereof to be declared invalid.

SECTION 5. CONFLICT. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 6. EFFECTIVE DATE. The ordinance shall take effect immediately upon its adoption.

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

Council Member Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this _____, 2021.

BY: TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

First Reading: 02/01/2021 Vote:

Second Reading: _____

ATTEST:

Debby K. Franklin, Town Clerk/Treasurer

(seal)

Approved as to form and
legal sufficiency by:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.b
Meeting Date: February 1, 2021

Prepared By: Lisa Morrell, Interim Town Manager

SUBJECT: Permission for the Town Manager to negotiate and amend terms and conditions pertaining to the Exclusive Solid Waste and Recyclable Material Collection Franchise Agreement, Ordinance 2014-12

BACKGROUND/HISTORY:

After a competitive process was completed on September 8, 2014, Town Council awarded the Town's Solid Waste Franchise Agreement to Waste Management with three (3) renewals, each with a term of seven (7) years. The first term of the contract is expiring on September 30, 2021 and is considered a contract renewal period, which serves as review and amendment of certain terms and conditions as mutually agreed upon by the Town of Malabar and the Contractor, Waste Management within 90 days prior to the expiration.

The Town Manager met with Waste Management on November 13th to discuss the contract renewal process and any concerns of the contractor for the next renewal term. The result of that discussion warrants a request for permission of the Town Council for the Town Manager to amend terms and conditions of the agreement with the contractor, Waste Management, for Town Council's approval and execution; these may include updated definition(s), language for sections, and or reporting requirements pertaining to the terms and conditions but not to effect the level(s) and type(s) of services awarded of he contract.

Within the Contract, Exhibit 2 entitled Collection Rate and Adjustment Schedule for Cost Component, the contract terms, this section of the contract establishes the Initial Operating Cost Statement for the initial period and is not required for each subsequent year within the period, *"However, the Town reserves the right to require the Contractor to provide and Operating Cost statement prior to each renewal period in order to recalculate the weight of each cost component, at The Town's sole discretion."* Also within Exhibit 2, the consumer price index is established and may be amended by the statement *"If either of these indexes becomes obsolete during the term of the Contract, an alternative, related index may be used, as agreed upon between the Contractor and the Town Administrator."*

These key contract term examples of duties and rights of the Town to perform a due diligence review and any amendment(s) prior to the contract renewal period are the basis for the motion.

ATTACHMENTS:

Ordinance 2014-12, Article IV of Appendix A, The Franchise Section of Volume One of the Code of Ordinances pertaining to the granting of exclusive Solid Waste and Recyclable Material Collection Franchise Agreement between Town of Malabar and Waste Management, Inc.

ACTION OPTIONS:

Motion to authorize the Town Manager to discuss contract terms and conditions with Waste Management for amendment(s) and consideration(s) by Town Council, no later than the May 21, 2021.

MALABAR ORDINANCE 2014-12

AN ORDINANCE OF THE TOWN OF MALABAR REPEALING AND REPLACING ORDINANCE 89-3 IN ARTICLE IV OF APPENDIX A, THE FRANCHISE SECTION OF VOLUME ONE OF THE CODE OF ORDINANCES PERTAINING TO THE GRANTING OF EXCLUSIVE SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION FRANCHISE AGREEMENT BETWEEN THE TOWN OF MALABAR AND WASTE MANAGEMENT INCORPORATED AKA HARRIS SANITATION; AMENDING SECTION 2 OF CONTRACT AGREEMENT TO PROVIDE FOR THE TERM OF FRANCHISE AND FRANCHISE FEE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Malabar, Florida, on June 17, 2014 awarded the service contract to Waste Management which granted Waste Management, Inc. exclusive solid waste and recyclable collection within the Town of Malabar. The contract agreement is attached to this ordinance as Exhibit "A" and shall become part of this Ordinance replacing Ordinance 89-3.

NOW THEREFORE, BE IT ENACTED, by the Town Council of the Town of Malabar, Florida:

SECTION 1: That Article IV, Solid Waste, of the Franchise Section in Appendix A of Volume 1 of the Malabar Code of Ordinances be repealed and replaced to read as follows:

"SECTION A: GRANTING OF FRANCHISE TERM AND CONSIDERATION

Waste Management, Inc., is granted the exclusive right, privilege and/or franchise to operate upon, over and across streets, bridges and other public thoroughfares of the Town of Malabar for the purpose of collecting, removing and disposing of solid waste material from the businesses, residences and construction sites in the Town of Malabar subject to the terms, conditions and exceptions contained in the Contract Agreement attached as Exhibit "A".

.

SECTION. DEFINITIONS

.

SECTION 2: AREA AND TERM "AND CONSIDERATION"

.

C. The term of this franchise shall be for a period of seven (7) years. At the end of the seven-year contract in 2021, there will be a seven (7) year option which shall automatically follow unless notification of non-extension is given in writing to Waste Management Inc. at least three (3) months in advance of the Agreements initial termination date. A second seven (7) year option may follow without rebidding unless notification of non-extension is given in writing to Waste Management Inc. at least three (3) months in advance of the Agreements initial termination date. As consideration for the exclusive solid waste and recyclable collection and mandatory subscription

for same by our residents and business establishments for the seven year Agreement, Waste Management Inc. shall pay to the Town a ten percent (10%) franchise fee on all services rendered immediately upon signing of this Agreement and continuing for the duration of the Agreement." Other considerations and rate updates as stipulated in the attached contract agreement shall be incorporated in the appropriate sections as directed."

.

SECTION B: CONFLICTS

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION C: CODIFICATION

Provisions of this agreement and Exhibit "A" shall be incorporated into Article IV, Solid Waste, Appendix A, Franchises, Section 3, Volume 1 of the Malabar Code of Ordinances as directed by this resolution.

SECTION D: Effective Date.

This Ordinance shall take effect five (5) days after adoption at second reading.

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

Council Member Jim Milucky	<u>Aye</u>
Council Member Wayne Abare	<u>Aye</u>
Council Member Steve Rivet	<u>Aye</u>
Council Member Dick Korn	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Aye</u>

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

(seal)

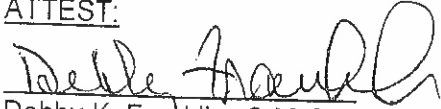
TOWN OF MALABAR

By:


Steve Rivet, Council Chair

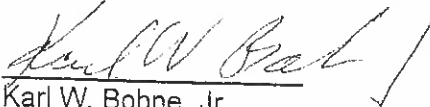
1st Reading: 07/21/14 (vote 4 to 0 for 1st reading)
2nd Reading: 09/08/14

ATTEST:



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

Approved as to Form and Content:



Karl W. Bohne, Jr.,
Town Attorney



TOWN OF MALABAR

SOLID WASTE AND RECYCLABLES COLLECTION AGREEMENT

COPY

THIS AGREEMENT made and entered into this 17th day of June 2014, by and between the TOWN OF MALABAR, a Florida municipal corporation, hereinafter referred to as the "TOWN", and Waste Management Inc. of Florida, a Florida corporation, hereinafter referred to as the "COLLECTOR".

WITNESSETH:

WHEREAS, COLLECTOR has been selected by the TOWN as its exclusive provider of solid waste and recyclables collection services pursuant to a competitive solicitation; and

WHEREAS, the COLLECTOR is qualified to provide such services and willing to do so pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual promises and conditions contained herein, it is mutually agreed between the parties as follows:

SECTION 1. DEFINITIONS. For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The work "shall" is always mandatory and not merely directory.

A. **AGREEMENT:** As used herein the term Agreement shall mean this Solid Waste and Recyclables Collection Agreement and the bid Proposal submitted by the Collector

B. **AUTOMATED CART:** The term "automated cart", "semi-automated cart" or "cart" refers to a 35, 64, or 96-gallon durable plastic container made with recycled content, with a lid, wheels and handles for automated or semi-automated solid waste or recyclable material collection services. The carts shall be uniform in color, contain instructions for use and have the Waste Management logo on the containers. The solid waste carts shall be green in color and the recycling carts shall be green with a yellow lid.

C. **AUTOMATED CART PROGRAM:** The term "automated cart program" or "semi-automated cart program" refers to the program where the COLLECTOR shall provide fully assembled carts for solid waste or recyclable material collection services.

D. **BULK COMMERCIAL UNIT:** All commercial, non-residential units receiving solid waste collection service at an accessible, centralized location or at a commercial container.

E. **BULK MULTIPLE-FAMILY RESIDENCE:** All trailers and trailer parks and any building or buildings containing more than one (1) permanent living unit or any trailer within a trailer park and receiving solid waste collection service at an accessible, centralized location or at a commercial container.

F. **COLLECTION AREA:** The entire limits of the TOWN as of the effective date of this Agreement and as same may be modified from time to time by annexation or contraction.

G. **COLLECTION CATEGORIES:** A general, inclusive term that includes the specific terms "single-family residence", "individual multiple-family residence", "individual commercial unit", "bulk multiple-family residence" and bulk commercial unit".

H. COMMERCIAL CONTAINER: A receptacle for containing solid waste designed for mechanical pickup and provided by the COLLECTOR for use by the customer.

I. COMPACTOR BOXES: Any mechanical compacting container used primarily to compact commercial and residential waste.

J. CONSTRUCTION AND DEMOLITION DEBRIS: Means those substances and materials as set forth in FAC 62-701.200 (27) as may be amended from time to time. The term includes, but is not limited to, material generally considered not to be water soluble, including, but not limited to steel, concrete, glass, brick, asphalt roofing material, pipe, gypsum wall board or lumber from a construction or demolition project or renovation of a structure; clean cardboard, paper, plastic, wood, and metal scraps from a construction project. Contamination of construction and demolition debris with any amount of other types of solid waste will cause it to be classified as other than construction and demolition debris.

K. CUSTOMER: Means the owner, occupant, or other person having control over improved real property within that portion of the COLLECTOR'S service area, and all other persons subscribing to solid waste or recyclable materials collection service provided by the COLLECTOR under the terms of a collection agreement.

L. DIRECTOR: The term "Director" means the Town Administrator or a designee.

M. E-Waste: The term e-waste shall include such items as televisions, computers, laptops (including monitors and keyboards) scanners, printers, cell phones, fax machines, stereos, radios, VCR's, compact fluorescent tubes and bulbs. An education program will be implemented for residents.

N. GARBAGE: The word "garbage" shall mean every refuse accumulation or deposit of animal, fruit or vegetable matter that attends the manufacture, preparation, use, cooking and dealing in, or storage of edibles, and any other matter, of any nature whatsoever, which is subject to decay, putrefaction and the generation of noxious or offensive gasses or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ-carrying insects, or any container of the material defined herein.

O. GARDEN TRASH, YARD WASTE or VEGETATIVE WASTE: The terms "garden trash", "yard waste", or "vegetative waste are synonymous and shall mean any vegetative matter generated from improved real property such as leaves, grass or shrubbery cuttings from the care of lawns or landscape maintenance. Such term does not include large quantities of sod, dirt, and trash from land clearing or other materials requiring special handling. "Bulk yard waste" shall mean any quantity of yard waste which exceeds three (3) cubic yards and which must be removed by a clam shell truck.

P. HAZARDOUS WASTE: The term "hazardous waste" shall mean any solid waste identified by the Department of Environmental Protection as a hazardous waste pursuant to F.A.C. Ch. 62-730. This includes any solid waste which is ignitable, corrosive, reactive, infectious or toxic, and which poses a substantial or potential hazardous to human health and safety, or to the environment when improperly managed.

Q. IMPROVED REAL PROPERTY: The term "improved real property" refers to all real property located in the TOWN that generates or is capable of generating solid waste; and, that contains buildings, structures or other improvements designed or constructed for and capable of use for human habitation or human activity or commercial enterprise. Real property becomes "improved real property" following construction completion and the initial issuance of a Certificate of Occupancy.

R. INDIVIDUAL COMMERCIAL UNIT: Any commercial, non-residential unit receiving curbside solid waste collection service in a normal volume not in excess of an amount capable of being placed in three 32-gallon garbage receptacles twice per week.

S. INDIVIDUAL MULTIPLE-FAMILY RESIDENCE: Any building containing more than one (1) permanent living unit and receiving curbside solid waste collection service from each unit, and all trailers located within trailer parks receiving curbside solid waste collection service from each individual trailer.

T. INDUSTRIAL WASTES: The words "industrial wastes" shall mean the waste products of canneries, slaughterhouses or packing plants, scallop or other seafood processors, condemned food products; agricultural waste products, and other solid waste products generated from industrial processing or manufacturing of a like or similar nature to those enumerated above which because of their volume or nature do not lend themselves to collection and incineration commingled with ordinary garbage and trash or which because of their nature and surrounding circumstances should be for reasons of safety or health disposed of more often than the collection service schedule provided for in this Agreement.

U. JUNK: Any tangible item such as furniture, appliances, bicycles, (excluding, for the purposes of this Agreement; motor vehicles, derelict vessels, and their parts, except up to four tires will be picked up) or similar property not having a useful purpose to the owner or abandoned by the owner and not included within the definitions of garbage, garden trash, industrial wastes or rubbish.

V. PARKWAY: The term "parkway" is defined as that portion of the street right-of-way paralleling any public thoroughfare between the curb line or paving line and adjacent property line.

W. PERSON: The term "person" shall mean an individual, firm, partnership, corporation, association, executor, administrator, trustee or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

X. RESIDENTIAL IMPROVED REAL PROPERTY: The term "residential improved real property" shall mean all improved real property used for either a multi-family residence, or a single-family residence, including trailer parks.

Y. ROLL-OFF CONTAINER: Any container used for the collection and storage of construction and demolition debris or land clearing debris that can be picked up and transported on a specially equipped truck to the disposal site. The definition of roll-off does not include a compactor box.

Z. RUBBISH: The word "rubbish" shall mean refuse, accumulation of paper, excelsior, rags or wooden or paper boxes or containers, sweepings; and all other accumulations of a nature other than garbage, which are usual to housekeeping and to the operation of stores, offices and other business places, also any bottles, cans or other containers which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water-breeding insects.

AA. SINGLE-FAMILY RESIDENCE: Any building or structure designed or constructed for and capable of use as a residence for one family regardless of the type of structure. Such term includes a mobile home or trailer that is erected on a parcel of property owned and offered for sale under the condominium concept of ownership or on a separate parcel of property and not included within the definition of trailer park.

BB. SOLID WASTE: The term "solid waste" means dewatered sludge from a waste treatment works, water supply treatment plant, or air pollution control facility or garbage, rubbish, refuse, or other discarded material, including solid material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Materials not regulated as solid waste pursuant to Florida Administrative Code as amended are: nuclear source or under the Federal Atomic Energy Act of 1954 as amended; suspended or dissolved materials in domestic sewage effluent or irrigation return flows, or other regulated point source discharges; regulated air emissions; fluids or waste associated with natural gas or crude oil exploration or production.

CC. SOLID WASTE FACILITY: The words "solid waste facility" shall mean and include the buildings, land, location, and equipment constructed and maintained by Brevard County to dispose of solid waste within the County.

DD. SPECIAL COLLECTION SOLID WASTE: The term "special collection solid waste" shall include the following types of solid waste for the following types of designated customer categories:

(1) Single-family residence and individual multiple-family residence: Any type of solid waste not reasonably capable of being placed in a garbage receptacle. This includes normal household furnishings, appliances, and other bulk items.

(2) Individual commercial unit: Any type of solid waste not reasonably capable of being placed in a garbage receptacle or any item not reasonably capable of being reduced in size not exceeding four (4) feet in length and twenty-four (24) inches in diameter and fifty (50) pounds in weight. This includes normal household furnishings, appliances, and other bulk items.

(3) Bulk commercial unit and bulk multiple-family residence: Any type of solid waste not reasonably capable of being placed in a commercial container, or any pickup of a commercial container on a frequency in excess of that normally established for the customer or any solid waste placed in garbage receptacles at an accessible centralized location not in conformity with the requirements specified above in Section CC(1) for a single-family residence.

(4) One collection day per week shall be designated for the collection of Special Collection Solid Waste as defined above.

EE. CURBSIDE RECYCLING: The collection of recyclable materials from single-family residences, individual multiple-family residences, bulk multiple-family residences, at curbside.

FF. PARTICIPATION RATE: The total number of residences that place any recyclable materials at the curb for the COLLECTOR to pick up during a four (4) week period divided by the total number of residences having the opportunity to place recyclable materials at the curb. A four (4) week period is considered to be a one (1) month period for the purpose of calculating participation rates.

GG. RECYCLABLE MATERIAL: Any material which can be recovered from the solid waste stream and reused in manufacturing, agriculture, power production or other processes and which, for the purpose of this Agreement, shall include at a minimum the following:

- Newspapers - (Daily newspapers, phone books, or magazines)
- Glass Jars and Bottles - (Clear, brown and green glass, food and beverage bottles)

- Plastic Bottles and Containers #1 – #7. No motor oil, antifreeze, pesticide, pool chemicals or other hazardous material bottles.
- Aluminum and Metal Cans - (Soft drink, beer, food and pet food cans, clean aluminum foil or clean disposable aluminum foil pans.)
- The Director reserves the right to add or delete other materials to the list of Recyclable Materials that shall be collected by COLLECTOR.
- By way of illustration, and not by limitation, the following items are acceptable recyclable materials:

BROWN PAPER BAGS

CATALOGUES

CEREAL BOXES

ENVELOPES

ENVELOPES WITH WINDOWS

GLOSSY PAPER

JUNK MAIL

MAGAZINES

OFFICE PAPER

PHONE BOOKS

SODA & BEER CARTONS

TOILET PAPER CARDBOARD ROLLS

PAPER TOWEL CARDBOARD ROLLS

TV GUIDES

NEWSPAPER & INSERTS

FLATTENED CARDBOARD

ASEPTIC PACKAGING (Milk Cartons & Juice Cartons)

STEEL & ALUMINUM CANS

ALUMINUM FOIL

ALUMINUM BAKEWARE

EMPTY AEROSOL CANS

GREEN, BROWN & CLEAR DRINK BOTTLES

PLASTIC BOTTLES & CONTAINERS # 1 through # 7

GG. RECYCLING CARTS: A cart supplied by the Collector, used for storing and collecting recyclable materials and identifying the recyclable materials at the collection point.

HH: RECYCLING PROGRAM: The program designated by the TOWN for meeting the solid waste reduction goals as mandated by the Solid Waste Management Act of 2008 and any subsequent amendments thereto.

II. CONSUMER PRICE INDEX (CPI): A measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services, "All

Urban Consumers, U.S. All Items 1982-84=100", as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics.

SECTION 2. AREA AND TERM.

A. The COLLECTOR shall have the sole and exclusive right and duty to collect all solid waste as provided under the terms and provisions of this Agreement within the jurisdictional limits of the TOWN.

B. Subject to the termination provisions contained in SECTION 10 of this Agreement, the term of this Agreement shall be effective on August 23, 2014 and extend until – August 23, 2021, with renewal for two (2) time for (7) seven year periods at the mutual agreement of the TOWN and COLLECTOR.

SECTION 3. DUTY OF THE COLLECTOR.

A. With the exception of the solid waste defined as special collection solid waste, the COLLECTOR shall pick up and deliver to a solid waste disposal facility all garbage, rubbish and garden trash placed by a customer at the collection point set forth in SECTION 6 hereof, from each single-family residence, individual multiple family residence and individual commercial unit within the subject service area not less often than two (2) times per week with collections at least three (3) days apart. It is intended that all such solid waste be picked up and delivered to the disposal site each collection day. The COLLECTOR shall notify the customers within the subject service area of the applicable schedule of collection at least ten (10) days prior to an alteration in said schedule.

B. The COLLECTOR shall pick up and deliver to a solid waste disposal facility all garbage, garden trash, and rubbish generated by a customer, from a bulk multiple-family residence and a bulk commercial unit and placed in a commercial container located at the designated collection point or in cans placed at a centralized location. The size and type of a commercial container including compactor boxes and the frequency of collection for each residence or unit shall be established by the COLLECTOR in consultation with the customer and shall be subject to approval by the Director in the event of a dispute. Provided, however, that the frequency of collection shall not be less than two (2) times per week with collections at least three (3) days apart.

C. The COLLECTOR shall pick up and deliver to the solid waste disposal facility Special Collection Solid Waste generated from a single-family residence, individual multiple-family residence and bulk multi-family residence of a customer and placed at the applicable collection point one (1) time per week.

D. The COLLECTOR shall pick up and deliver to the solid waste disposal facility all special collection solid waste generated from an individual commercial unit and a bulk commercial unit placed at the applicable collection point within seventy-two (72) hours, after the rate is negotiated and paid to the COLLECTOR, excluding Sundays and legal holidays, of notice by the customer and the COLLECTOR..

Rates for the collection of individual commercial and bulk commercial special collection solid waste shall be negotiated between the customer and the COLLECTOR.

E. The COLLECTOR shall not be required to furnish collection services on the following specified holidays: Memorial Day, Fourth of July, Veterans Day, Thanksgiving Day and Christmas Day. The COLLECTOR shall notify all customers whose normal collection day falls upon such holidays that no collection service will be provided on such day and the date of the next normal collection day at least ten (10) days and not more than thirty (30) days prior to said

holiday. Said notice shall be in the form of an advertisement in a newspaper of general circulation published within the COUNTY. The COLLECTOR will collect rubbish and garden trash on the next scheduled collection day. If the County chooses to close the landfill on additional days, the COLLECTOR shall not be required to provide collection services on that day.

F. The COLLECTOR shall be prepared to provide all commercial containers required in the collection of solid waste within the service area and shall maintain such containers in a clean and operable condition including an acceptable appearance according to standards maintained from time to time by the Director. The COLLECTOR shall provide at a minimum, containers of two (2), three (3), four (4), six (6), and eight (8) cubic yards for use as commercial containers or carts as specified in the RFP.

G. The COLLECTOR shall supply the residential carts for automated service for solid waste if the automated method is chosen as specified in the RFP. Regardless of the system chosen, the COLLECTOR will furnish the recycling container in accordance with the method chosen from the RFP.

SECTION 4. STANDARDS OF COLLECTION AND OPERATION.

A. The COLLECTOR shall provide sufficient equipment to maintain regular schedules of collection and to promptly and efficiently perform its duties under this Agreement. The Director shall have the authority to inspect the vehicles on such inventory list and reject a given vehicle for health or safety reasons and require a suitable replacement. The COLLECTOR shall attach to such inventory a copy of each contract, lease, or other document that encumbers or limits the COLLECTOR's interests in such property. The COLLECTOR may change equipment from time to time and shall revise the inventory and the attachments thereto, however, in no event shall the number of vehicles be less than the number of vehicles shown on the inventory provided by August 23rd of each year. The COLLECTOR shall maintain a vehicular fleet during the performance of work under this contract at least equal to that described in the inventory.

B. Equipment is to be maintained in a reasonably clean and safe working condition and be painted uniformly according to standards maintained from time to time by the Director. Equipment shall contain the name of the COLLECTOR, and the truck number or code established by the COLLECTOR printed in letters not less than three (3) inches high on each side of the vehicles. A record shall be kept of the vehicle to which each number is assigned. No advertising shall be permitted on the vehicles.

Each vehicle used for the collection of solid waste shall have a fully enclosed, metal top and shall be water tight to a depth of not less than (12) inches and shall contain metal sides, and use pneumatic tires. However, the Director shall have the authority to waive the requirement of a fully enclosed, metal top in the event of an emergency. As an alternative to a fully enclosed metal top for use in garden trash collection, said vehicle may be equipped with a cover which may be a net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, and such cover shall be kept in good mechanical order and used to cover the load in traveling to, from and during the loading operation or when parked if the contents are likely to be scattered if not covered.

Vehicles shall not be overloaded so as to scatter solid waste, but when solid waste is scattered from a COLLECTOR'S vehicle for any reason, it shall be the responsibility of the COLLECTOR to immediately pick up such scattered solid waste. Each truck shall be equipped at all times with a shovel and a broom for the collection of spilled refuse.

Vehicles are to be washed thoroughly on the inside and sanitized with a suitable disinfectant and deodorant from time to time in order to be maintained in a clean and sanitary condition and all vehicles are to be washed on the outside at least weekly.

The COLLECTOR'S vehicles are not to interfere unduly with vehicular or pedestrian traffic and vehicles are not to be left standing on streets unattended.

C. It is recognized that disputes may arise between the TOWN and the COLLECTOR with regard to the collection of certain items due to disputes over the specific language of this Agreement. In such event, the TOWN shall inspect the subject area at the request of the COLLECTOR. The TOWN may from time to time notify the COLLECTOR of the location and nature of solid waste which has not been collected due to dispute between the TOWN and the COLLECTOR; and it shall be the duty of the COLLECTOR to remove all such solid waste within (5) business days from the date of the notice. Should the COLLECTOR fail to remove said solid waste when obligated to do so pursuant to this Agreement, the TOWN will remove the solid waste and the costs incurred by the TOWN shall be assessed against the COLLECTOR. In the event the COLLECTOR disagrees with the decision of the Director he shall have the right to appeal such decision to the Town Council and the decision of the Council shall be final.

D. Commercial containers furnished by the COLLECTOR to the customer shall be approved by the Director and shall have lettering not less than one and one-half (1 ½) inches high indicating the identification of the COLLECTOR and following words: "Keep Lids Closed". The COLLECTOR shall close the lids on commercial containers upon removal of solid waste.

E. The COLLECTOR shall make collections with a minimum of noise and disturbance to the occupant of the building and shall not collect from residential collection points prior to the hour of 6:00am nor after the hour of 9:00pm, except the week following holidays and during TOWN designated emergency times. Garbage receptacles and other containers shall be handled carefully by the COLLECTOR and shall be thoroughly emptied and then returned and placed at least three (3) feet from the edge of the pavement where possible, standing upright and with covers securely in place. Any solid waste spilled or scattered by the COLLECTOR shall be immediately picked up.

F. The direction and supervision of solid waste collection shall be by competent and qualified personnel and the COLLECTOR shall devote sufficient personal time and attention to the direction of the operation to insure performance of his obligations and duties as specified under the provisions of this Agreement.

The COLLECTOR shall cooperate with authorized representatives of the TOWN in every reasonable way in order to facilitate the progress of the work contemplated under this Agreement.

The COLLECTOR shall provide, at its own expense, a suitable office located within Brevard County and shall maintain office hours from 8:00 am to 5:00 pm Monday through Friday and 8:00 am to 12:00 noon on Saturday. In addition, the COLLECTOR shall designate a representative for emergency and complaint calls during the entire week excluding the hours from 5:00 pm Saturday through 8:00 am Monday.

G. Employees collecting solid waste will be required to follow the regular walk for pedestrians while on private property. No trespassing by employees will be permitted, or crossing property to neighbor's premises unless residents or owners of both such properties have given permission.

Care should be taken to prevent damage to property, including flowers, shrubs and other plantings. The COLLECTOR shall not be responsible for cleaning up unsanitary conditions about the solid waste containers caused by carelessness of the customer.

Care shall be taken by employees to prevent damage to containers by unnecessarily rough treatment. The COLLECTOR shall report to the Director all situations which prevent or hinder the collection of solid waste on any premises.

H. The COLLECTOR may change the scheduled days for collection and/or routes only after informing the Director and authorized by the Council. In the event the COLLECTOR makes a change in routes or schedules that alters the day of pickup for any service, the COLLECTOR shall, at its expense, notify each affected Customer by mail or other manner not less than one week prior to the change. The TOWN reserves the right to deny the COLLECTOR'S vehicles access to certain streets, alleys and public ways where it is in the interest of the general public to do so because of conditions of the streets or bridges or the nature of development of the general area. The COLLECTOR may request and the Director may declare certain streets, alleys and public ways closed for the purpose of collection vehicle operation because of dangers, inadequate clearance, poor road conditions and others. When these closures occur, the COLLECTOR shall supply other types of solid waste collection service acceptable to the Director. Notice shall be given by the Director prior to such denial so as not to unduly interfere with the COLLECTOR's normal operations.

I. The COLLECTOR shall provide backdoor solid waste receptacle pickup from single family residences for customers who are physically disabled and unable, and have no other means, to place their receptacles at the collection point as specified in SECTION 6. The customer shall provide the COLLECTOR with appropriate evidence that they are unable to place their receptacles at the collection point.

J. The residential collection driver will notify dispatch of a bulk yard waste pick up requirement and shall also identify the location of such pick up.

K. The COLLECTOR shall be responsible for the purchase and distribution of automated carts as well as the repair of carts that have been damaged. Carts are the property of the COLLECTOR. The COLLECTOR shall distribute two (2) 64-gallon carts (one for solid waste and one for recycling) to each residential unit. Carts will be distributed pursuant to a schedule mutually agreed upon by the TOWN and the COLLECTOR. The COLLECTOR shall maintain, at all times, a sufficient number of carts to ensure that extra or replacement carts can be provided within seven (7) working days upon notification to Waste Management by the resident or the TOWN. The COLLECTOR shall distribute fully assembled automated carts to new single-family and multi-family residential units added during the term of this Agreement. The COLLECTOR's shall repair or replace carts at the COLLECTOR's expense. Customers desiring a smaller or larger cart other than the default size 64-gallon cart can request a cart change during the sixty (60) day period after August 23, 2014. Cart size changes will be made within seven (7) working days upon notification to Waste Management by the resident or the TOWN. Solid waste and recycling carts are available in 35, 64, and 96 gallon sizes. The second request for a cart size change will incur a charge of \$25.00 per cart. The cart service will begin on August 23, 2014, but the rates will not increase until October 1st, 2014

Customers wishing to have more than one garbage cart may RENT additional carts for a fee of \$9.00 per quarter with a \$25.00 delivery charge. Replacement of carts that are damaged, lost, or stolen due to customer abuse or neglect shall be replaced by the customer. The COLLECTOR shall be responsible for all billing and collection of cart fees.

SECTION 5. COMPLAINTS.

A. The COLLECTOR shall perform a service of high quality and keep the number of legitimate complaints to a minimum. In order that the TOWN may be informed of the quality of service, the COLLECTOR agrees to maintain a record of all complaints for inspection by the TOWN. The COLLECTOR agrees to furnish a monthly report listing the name and address of the person complaining, the nature of the complaint, and the disposition of each complaint.

SECTION 6. DUTY OF CUSTOMERS.

A. All garbage and rubbish and all grass cuttings, leaves, small clippings and trimmings generated from a single-family residence, individual multiple-family residence, or individual commercial unit shall be placed by the customer in one or more garbage receptacles, plastic bags or other containers which are acceptable to the COLLECTOR and approved by the Director and placed at the applicable collection point on the designated collection day. All other solid waste shall be stacked in uniform direction at the applicable collection point and shall include only items in size not exceeding four (4) feet in length and twenty-four (24) inches in diameter and fifty (50) pounds in weight. Any special collection solid waste shall be placed at the collection point on the collection day for special collection solid waste.

B. All solid waste generated from a bulk commercial unit or a bulk multiple-family residence, other than special collection solid waste, shall be placed by the customer in a commercial container located at the applicable collection point, or in garbage receptacles located at the applicable collection point, on the designated collection day.

C. The customer shall place all solid waste at the following collection points for the specified categories of property:

(1) Single-family residence: At a point within the parkway abutting such residence no farther than five (5) feet from the curb line or paving line, or, in the case no parkway exists which abuts the customer's property, at a point no greater than five (5) feet from curb line or paving line of the nearest public street, or, in the case of the existence of a drainage ditch, at a point within said dimensions adjacent to the nearest driveway.

(2) Individual commercial unit and individual multiple-family residence: At those points designated by the COLLECTOR in consultation with the customer, which will maximize economy in the collection of the solid waste while considering the public health and the convenience to the customer.

(3) Bulk multiple-family residence and bulk commercial unit: At a point designated by the COLLECTOR in consultation with the customer, which will maximize economy in the collection of the solid waste while considering the public health and the convenience to the customer. In the event of a dispute between the COLLECTOR and a customer regarding the location of the collection point in the COLLECTOR's decision shall be subject to approval by the Director.

SECTION 7. HAZARDOUS WASTE.

A. No customer shall place or deposit hazardous or infectious waste at any solid waste collection point or in any other place where it might reasonably be expected to be collected by COLLECTOR.

B. The COLLECTOR shall not dispose of hazardous or infectious waste at any Brevard County solid waste disposal facility. The COLLECTOR shall refuse to collect solid waste from a customer if the COLLECTOR believes that such solid waste contains hazardous or infectious waste. If the COLLECTOR believes that a customer is depositing hazardous waste for collection, the COLLECTOR shall immediately notify the Director.

C. The Director shall have the authority to inspect the waste being deposited by a customer at any time to determine whether such waste contains hazardous waste, and, to take whatever action he deems necessary to insure that the customer ceases the placement of hazardous waste into the Brevard County Solid Waste Disposal System. Such an inspection shall be required upon receipt of notice from a COLLECTOR pursuant to subsection B of this section.

D. A residential customer may notify COLLECTOR, by telephone, of a bulk yard waste pick up requirement and the location of such pick up but is not required to provide said notification.

SECTION 8. COMPENSATION TO COLLECTOR; ESTABLISHMENT OF RATES

A. The initial rates for the services of the COLLECTOR pursuant to this Agreement are set forth in Exhibit 1, provided,

B. The charge for the pickup of special collection solid waste generated by a bulk commercial unit and an individual commercial unit shall be negotiated between the COLLECTOR and the customer and billed by the COLLECTOR.

C. It is mutually understood between the parties that each customer shall have the right to purchase his own commercial container rather than rent same from the COLLECTOR provided that the container is compatible with COLLECTOR's collection equipment.

D. The COLLECTOR shall bill each commercial customer for collection services based on the rate, charge or fee for each customer as established under this section of this Agreement. In the event of a dispute between the COLLECTOR and customer as to a rate, fee or charge, or as to a charge for additional or special collection pickup, the Director shall arbitrate and resolve the dispute.

E. The COLLECTOR shall bill each residential customer for collection services based on the rate, charge for each customer as established under this section of this Agreement quarterly by direct mail or electronic mail.

E. The rates and charges set above Exhibit 1: shall be adjusted annually and computed pursuant to the mathematical formula provided as Exhibit 2 (Collection Rate Adjustment).

F. The COLLECTOR may petition the TOWN to adjust COLLECTOR's rates based upon unusual and unanticipated increases in the cost of doing business, including but not limited to a change in law or regulation ("Change in Law"). Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefore. The TOWN shall be entitled to audit the COLLECTOR's financial and operational records directly related to the Contractor's request in order to verify the increase in costs and the reasons therefore. Any change in rates other than the annual rate increase will be the responsibility of the COLLECTOR to collect.

"Change in Law" means (i) the adoption, promulgation, or modification after the date of this Agreement of any law, regulation, order, statute, ordinance, or rule that was not adopted, promulgated, or modified on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, or approval after the date of this Agreement, which in the case of either (i) or (ii) establishes requirements affecting the COLLECTOR's operation under this Agreement more burdensome than the requirements that are applicable to COLLECTOR and in effect as of the date of this Agreement. A change in any federal, State, county, or other tax law or workers compensation law shall not be a Change of Law. However, in the event that a federal, state or

local entity imposes a fee, charge or tax after the date of this Agreement that applies to COLLECTOR's operations per se, such fee, charge or tax shall be treated as a Change in Law.

The COLLECTOR's request must be made within one hundred twenty (120) days of the occurrence of such unusual change or cost, and shall contain reasonable proof and justification to support the need for the rate adjustment. The TOWN may request from the COLLECTOR, and the COLLECTOR shall provide, such further information within its possession as may be reasonably necessary in making its determination. The TOWN shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the TOWN. The TOWN shall make a reasonable determination based upon the documentation provided in reaching its decision and shall not unreasonably deny relief hereunder.

G. In the event disposal charges for the TOWN's waste are increased, the COLLECTOR shall notify the TOWN of such increase and propose an appropriate rate adjustment to adequately compensate COLLECTOR for such increase. The TOWN may request information from the COLLECTOR to substantiate such rate increase. After receipt of same, the TOWN shall promptly consider such request and shall accept or reject same within 30 days of receipt of such request and supplemental information. The TOWN shall not unreasonably deny the rate adjustment. Any change in rates other than the annual rate increase will be the responsibility of the COLLECTOR to collect.

H. The COLLECTOR shall be required, if requested by the customer, to furnish a roll-off container or a compactable container; provided, however, such request shall not be granted if the type of solid waste generated requires a greater frequency of pickup than reasonably contemplated by the use of said containers. The rate and rental for such roll-off container and the rental for such compactable container shall be as stated in the RFP and billed by the COLLECTOR. In the event of a dispute between the COLLECTOR and the customer as to such rate or rental, the Director shall arbitrate and resolve the dispute.

I. Each residential customer will be billed for service quarterly by the COLLECTOR. Each commercial customer will be billed for one month's service in advance by the COLLECTOR. In no event shall the TOWN be responsible for maintaining commercial customer lists, verifying services or resolving disputed charges. Neither shall the TOWN be responsible for paying for any service rendered by COLLECTOR to any customer.

COLLECTOR shall charge for the services rendered solely according to the terms of this Agreement, at the rates set forth in this Agreement, except as they may be adjusted subsequently pursuant to this Agreement. COLLECTOR shall not charge more for such services. If any customer shall fail to make payment of invoices submitted by COLLECTOR within net 30 days, then COLLECTOR may, upon fifteen (15) days written notice to such customer, repossess COLLECTOR-owned carts or cans and discontinue service to such customer until all delinquent amounts have been paid in full together with a \$50.00 re-establishment of service fee. COLLECTOR shall provide duplicate copies of all such delinquency notices to the TOWN, and shall advise the TOWN at such times as it discontinues service and when it recommences service upon receipt of payment. COLLECTOR shall not deny service to a new customer because a prior customer at the same location has not paid the account in full. The TOWN shall take such steps as are necessary to compel those delinquent accounts to pay all delinquent amounts and the re-establishment fee.

Prior to establishing service with a commercial customer or a customer being billed by the COLLECTOR pursuant to this section, the COLLECTOR may collect a deposit. However, such deposit shall not exceed the normal charge for three month's service to the customer. In addition, any such deposit shall be returned to the customer after twelve (12) months continuous service with no delinquent payments.

Any such customer may pay in advance for the collection services provided pursuant to this Agreement. However, the COLLECTOR shall not require a customer to pay for such collection services more than one (1) month in advance.

The COLLECTOR may impose, in addition to the amount owed (together with interest at 1.5% per month) to the COLLECTOR, a re-connect fee not to exceed the greater of Twenty-five Dollars (\$25.00), or the normal charge for one (1) month's service for a commercial customer, where a commercial customer whose service has been terminated for non-payment wishes to be served by the COLLECTOR again.

There will be no vacancy adjustments for residential customers.

SECTION 9. HURRICANE OR OTHER DISASTER.

A. In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Director shall grant the COLLECTOR a variance from regular routes and schedules. As soon as practicable after such event, the COLLECTOR shall advise the Director when it is anticipated that normal routes and schedules can be resumed. The Director shall make an effort through the local news media to inform the public when regular services may be resumed.

B. The COLLECTOR shall not be responsible for nor have an obligation to collect, transport or dispose of debris or other waste material from a hurricane, severe storm or other natural or man-made disaster unless the TOWN enters into a written agreement with COLLECTOR specifying the terms and compensation for such services. Should the parties enter into a written agreement and in the event the storm is declared a disaster such that FEMA is authorized to participate in managing the cleanup, the COLLECTOR shall be responsible for the preparation of all documents and forms and support information required by FEMA. Such documents, forms and information shall be submitted to the TOWN by the CONTRACTOR within the time limits established by FEMA for such filings.

C. The parties agree, storms and other disasters, whether named or not, often cause volumes of solid waste to increase measurably once the disaster terminates. Accordingly, once the COLLECTOR resumes normal collection routes after a disaster whether or not it is one declared by FEMA, the COLLECTOR may be entitled to additional compensation for the collection, transportation and/or disposal of solid waste in excess of historical volumes for the period in question as the result of such disaster event. COLLECTOR shall substantiate the additional costs caused by the event by providing documentation and corroboration of increased costs for personnel and labor, equipment, transportation costs (including fuel and additional trip times) and disposal costs as applicable. The TOWN shall have the right to audit such costs.

SECTION 10. COMMENCEMENT OF AGREEMENT; DISAGREEMENTS; DEFAULT OF COLLECTOR; NO WAIVER.

A. COMMENCEMENT OF AGREEMENT: This Agreement shall be effective August 23, 2014.

B. DISAGREEMENTS: To prevent all disputes or litigation, it is understood that all questions rising as to the proper performance and the amount of work to be paid for under this Agreement shall be subject to the decision of the Director subject to the right of the COLLECTOR to appeal to the Board, whose decision shall be final and binding.

C. SERVICE DURING DISAGREEMENT: During any dispute which arises between the TOWN and the COLLECTOR, in any way relating to this contract, performance, or

compensation hereunder, the COLLECTOR shall continue to render full compliance with all terms and conditions of this contract but shall not waive or relinquish any rights by doing so.

D. DEFAULT OF COLLECTOR: The COLLECTOR may be held in default of the Agreement in the event the COLLECTOR, after receiving written notice specifying the event of default and the passage of 10 days without cure:

1. Fails to perform the collections required by the Agreement and has abandoned the work, or is unable to resume performance within forty-eight hours; or
2. Has failed on three or more occasions of three working days duration each in any year, to perform the collections required by the Agreement; or
3. Repeatedly neglects, fails, or refuses to comply with any of the material terms of the Agreement, after having received written notice of its obligation to so comply.
4. Becomes insolvent or bankrupt, declares bankruptcy or has a receiver or trustee appointed to manage its affairs.

To initiate proceedings under this section, the Director shall first request the Town Council to declare the COLLECTOR in default.

Within three working days after its receipt of such a request, the TOWN shall give notice to the COLLECTOR and its surety of the location, time, and date within the following seven calendar days of a public hearing at which the COLLECTOR may show cause why it should not be declared in default. In the event the COLLECTOR fails to show, to the reasonable satisfaction of the TOWN cause why the COLLECTOR should not be declared to be in default, the Council shall make such declaration.

In declaring the COLLECTOR to have defaulted on the Agreement, the TOWN may also order the COLLECTOR to discontinue further performance of work under the contract and transfer the obligation to perform such work from the COLLECTOR to the Surety on the COLLECTOR'S performance bond and take any other action it deems advisable.

In the event the TOWN secures the performance of work under the Agreement at a lesser cost than would have been payable to the COLLECTOR had the COLLECTOR performed the same, the TOWN shall retain such difference; but in the event such cost to the TOWN is greater, the COLLECTOR and its surety shall be liable for and pay the amount of such excess to the TOWN.

All payments due the COLLECTOR at the time of default, less amounts due the TOWN from the COLLECTOR; shall be applied by the TOWN against damages suffered and expense incurred by the TOWN by reason of such default; any excess shall be paid to the COLLECTOR except as provided in the Agreement.

Notwithstanding the provisions of this section, a delay or interruption in the performance of all or any part of the Agreement resulting from changes ordered in the work, from labor disputes, or, from other causes beyond the COLLECTOR'S control or other Force Majeure event set forth in Section 15, shall not be deemed to be a default and the rights and remedies of the TOWN provided for herein shall not be applicable.

E. NO WAIVER: No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement nor affect the right of a party hereto to enforce same. The payment or

acceptance of compensation for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

SECTION 11. ADMINISTRATIVE CHARGES.

The following acts or omissions, if not cured within 2 working days after written notice, which includes all forms of written communication including, but not limited to facsimile transmission or electronic transmission (e-mail), shall permit the TOWN to impose administrative charges under this Section. Administrative charges, if any, must be imposed no later than the month following the event's occurrence. Administrative charges will be invoiced monthly to the COLLECTOR with written explanation included in the remittance.

1. Collection of residential solid waste prior to 6:00am or after 9:00pm
\$100.00 each event
2. Legitimate Complaints greater in number than 5% of the residential customers in any one month -- \$50.00 each
3. Failure to clean vehicles and maintain in good working condition.
\$25.00 per vehicle.
4. Failure to pick up "Special Collection Solid Waste" within five (5) business days.
\$100.00 each case on the third day after written notice and \$50.00 each day thereafter until cured.
5. Failure to maintain schedule established and given as a requirement of this Agreement. -- \$100.00 per violation of route schedule.
6. Failure to pick up debris scattered by COLLECTOR. -- \$100.00 each case on the third day after written notice and \$25.00 each day thereafter until cured.
7. Failure to pick up properly prepared Bulk Yard Waste (clam shell pick up) -- \$200.00 each case on the third day after written notice and \$50.00 each day thereafter until cured.
8. Failure to dispose of recyclable materials in a proper fashion -- \$200.00 each load
9. Failure to collect recyclables, solid waste or vegetative waste (garden trash) on schedule -- \$50.00 per stop on the third day after written notice and \$20.00 each day thereafter until cured.
10. Failure to repair or replace damaged carts with the 7-days of notification by the residents or the Town - \$25.00 each day thereafter until cured or approved by the Director.

In the event that COLLECTOR disagrees with the imposition of administrative charges by the TOWN, it shall have 10 days after notice of same to protest. COLLECTOR shall serve a written notice of protest on the Director explaining the basis for its protest. Within 15 days, the Director shall determine the protest making specific findings to support its decision. If the COLLECTOR disagrees with the decision, it can utilize the provisions of Section 19 for a final determination.

SECTION 12. INSURANCE AND INDEMNIFICATION.

A. The COLLECTOR shall furnish to the TOWN evidence of insurance coverage for all insurance required under the provisions of this section of this Agreement immediately upon the execution of this Agreement by the parties. Failure of the COLLECTOR to maintain said insurance at any time during the term of this Agreement by the COLLECTOR, shall be construed to be a material breach of the Agreement by the COLLECTOR.

B. The COLLECTOR shall provide and maintain during the term of this Agreement such worker's compensation insurance as required by law for all of its employees employed in connection with the performance of the work provided for under this Agreement.

C. COLLECTOR hereby agrees to protect, defend, indemnify and hold harmless TOWN and its directors, officers, employees and agents from and against any and all claims against any of TOWN and its directors, officers, employees and agents by a third party for loss or damage of any nature or kind arising directly or indirectly from negligence, willful misconduct or breach of laws or any provision of this Agreement of any of COLLECTOR or its agents, servants or independent contractors, except and to the extent that such loss or damage was caused by the negligence, willful misconduct or breach of laws or any provision of this Agreement by any of the TOWN and its directors, officers, employees and agents.

D. The COLLECTOR agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the TOWN, policies of insurance generally known as "public liability policies" insuring the COLLECTOR against any and all claims, demands or causes of action whatsoever for injuries received or damage to property relating to the performance of the duties of the COLLECTOR under the terms and provisions of this Agreement. Such policies of insurance shall insure the COLLECTOR in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) to cover any and all claims connected with any accident or occurrence that may arise or be claimed to have arisen against the COLLECTOR. The COLLECTOR shall also obtain property damage insurance insuring the COLLECTOR in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) to cover the claims of any person or persons from a single or specific act that result in alleged damage to property. The COLLECTOR agrees to provide and maintain at all times under this Agreement motor vehicle public liability insurance in an amount of not less than \$300,000 to cover the claims of one person, and \$500,000 per incident.

Said insurance policies shall provide that the TOWN shall be entitled to thirty (30) days written notice of any changes or cancellations in said policies.

A certificate of insurance indicating that the COLLECTOR has coverage in accordance with the requirements of this Agreement, shall be furnished by the COLLECTOR to the Director within ten (10) days from the date of the execution of this Agreement.

SECTION 13. PERFORMANCE BOND.

The COLLECTOR shall provide a COLLECTOR'S performance and payment bond in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) with a surety company acceptable to the TOWN as surety, which bond shall be conditioned that such COLLECTOR shall faithfully perform all of the provisions of this Agreement and pay all laborers, mechanics and sub-contractors and material men, and all persons who shall supply such COLLECTOR or sub-contractors with provisions and supplies for the performance of this Agreement; and shall perform work or services, or furnish material to any sub-contractor, shall have the same right under the provisions of such bond as if such works, services or material was furnished to the original COLLECTOR, and shall contain appropriate recitations; (1) that it is issued pursuant to this Section of this Agreement; (2) that it shall be construed to meet all the requirements specified herein; and (3) that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void.

SECTION 14. MISCELLANEOUS.

A. The COLLECTOR shall comply with all laws, ordinances, rules and regulations now existing or established or hereinafter established at any time during the term of this Agreement by the TOWN, State Legislature and agencies, and Federal Government.

B. It shall be the responsibility of the COLLECTOR to maintain its books and records in accordance with generally accepted accounting principles. The TOWN shall have the right to audit said books and accounts at any time during normal business hours upon giving reasonable notice not less than 5 working days to the COLLECTOR as to the time and place of such audit.

C. The COLLECTOR shall perform his duties under the terms and provisions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. No part of this Agreement shall in any way be construed or interpreted to constitute the COLLECTOR or any of his agents or employees as the agent, employee or representative of the TOWN.

D. To prevent misunderstanding or litigation, the Director shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the manner of performance, the rate of progress of said work, the interpretation of the Agreement provisions, and the acceptable fulfillment of the Agreement on the part of the COLLECTOR subject to the provisions of Section 19.

E. The COLLECTOR shall furnish the Director with every reasonable opportunity for ascertaining whether or not the duty of the COLLECTOR is being performed in accordance with the terms and conditions of this Agreement. The COLLECTOR shall designate in writing the person to serve as agent between his organization and the TOWN. The TOWN shall have the right to inspect the operations and equipment of the COLLECTOR at any reasonable time upon the giving of reasonable notice and the COLLECTOR shall admit such authorized representatives of the TOWN to make such inspections.

F. No modification or amendment of the terms hereof shall be effective unless written and signed by the parties hereto.

G. The provisions, covenants and conditions to this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

H. Should any terms, provision, condition or other portion of this Agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of the Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

I. The terms and conditions of this contract supersede the terms, obligations and conditions of any existing or prior Agreement or understanding, written or oral, between the parties regarding the work to be performed, compensation to be paid, and all other matters contained.

SECTION 15. FORCE MAJEURE.

If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruption, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of

such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force Majeure"), then the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Force Majeure shall promptly notify the other party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a Party shall not be excused from performance under this Agreement for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the Services hereunder.

SECTION 16. RECYCLING PROGRAM COLLECTION.

A. COLLECTOR is hereby granted an exclusive franchise to perform curbside recycling collection services within the service area.

B. The COLLECTOR shall pick up all recyclable materials placed at the curb or at the designated collection point from each single-family residence, individual multiple-family residence, bulk multiple-family residence, individual commercial unit and bulk commercial unit within the subject service area not less than one (1) time per week and with said collection occurring on a normal solid waste collection day. The COLLECTOR shall notify the customers within the subject service area of the applicable schedule of recyclable materials collection at least ten (10) days prior to an alteration of said schedule.

C. The COLLECTOR shall furnish a recycling cart at the COLLECTOR'S expense to those single-family residence and individual multiple-family residences. Said container shall be the property of the COLLECTOR. The size of the container will be selected by the TOWN.

D. The COLLECTOR shall replace lost recycling containers in an amount up to five percent (5%) of the households served, and all broken recycling containers. Each residence shall not be given more than one (1) replacement within a year at the COLLECTOR'S expense.

E. The COLLECTOR shall remove only recyclable materials placed in the recycling container at the curb from all residences that presently receive regular residential garbage collection. There shall be no limit to the quantity of recyclable materials that will be picked up from each residence.

F. The COLLECTOR will not be required to collect materials that are in violation of this Agreement. The non-recyclable materials in the recycling container will be left in the container at the residence as examples of incorrect materials that should not be placed out for collection. Information will be placed in or on the container by the COLLECTOR explaining why the materials were left.

G. The COLLECTOR shall not in any way break or damage or roughly handle the recycling container and shall empty the container and then return it to the curb or designated collection point.

H. The COLLECTOR shall furnish containers to all bulk multiple-family residences and commercial units serviced by the COLLECTOR at rates agreed to between the parties prior to the initiation of the recyclable materials collection service as provided herein.

I. For providing recycling program collection services as specified hereunder, to all improved residential real property within the TOWN. The COLLECTOR shall be compensated in accordance with Exhibit 1 of this Agreement.

J. COLLECTOR shall retain 100% percent of all proceeds received from the sale of recyclable materials and said revenue shall be credited back to the resident when calculating annual rate increases.

SECTION 17. DUTIES OF THE CUSTOMER; RECYCLING PROGRAM.

A. The customer is responsible for proper care and cleaning of any recycling container provided for use in the program.

B. The recycling program shall be single stream commingled recycling.

C. The customer shall drain off all liquids from recyclable materials prior to deposit in the recycling container. Recyclable glass food and beverage containers shall be rinsed prior to placement in the recycling container. Newspapers shall be free of food or other contaminants when placed in a recycling container.

D. All recyclable materials generated from a single-family residence, individual multiple-family residence, or individual commercial unit shall be placed by the customer in the recyclable container. On the designated collection day, said recyclable container shall be placed at the curb that is a normal collection point, but shall be kept separate and apart from regular solid waste.

E. All recyclable materials generated from a bulk commercial unit, or a bulk multiple-family residence, shall be placed by the customer at the collection point described in Section 6 Paragraph (C) (3) of this Agreement.

F. Recyclable materials placed in a recyclable container by a single-family, individual multiple-family, or individual commercial unit, shall not exceed a weight of fifty (50) pounds or the weight specified by manufacturer on the cart.

G. E-waste shall be collected by the COLLECTOR. There shall be no additional charge for the pick-up of the e-waste.

SECTION 18. DUTIES OF THE COLLECTOR, GARDEN TRASH COLLECTION, BULK YARD WASTE

A. The COLLECTOR shall pickup all properly prepared Garden Trash and Bulk Yard Waste placed at the curb or at the designated collection point from each single-family residence, individual multiple-family residence and bulk multi-family residence, not less than one (1) time per week. The COLLECTOR shall notify the customers of the applicable schedule of Garden Trash collection at least ten (10) days prior to an alteration of said schedule.

B. The COLLECTOR shall pick up all properly prepared Garden Trash and Bulk Yard Waste placed on those road medians or common areas of subdivisions, apartments, townhouses or other multi-family units prescribed by the Director, in consultation with the COLLECTOR, not less than one (1) time per week. The schedule for pick up shall be the same as for other residences in the collection area.

C. The COLLECTOR shall only remove Garden Trash and Bulk Yard Waste placed at the curb from all residences that receive regular residential solid waste collection service. There shall be no limit to the quantity of Garden Trash or Bulk Yard Waste that will be picked up from each residence so long as the Garden Trash is prepared as follows: All branches, fronds and other material must be cut into lengths not exceeding four (4) feet in length, twelve (12) inches in diameter, and fifty (50) pounds in weight and separated from other solid waste. All

grass cuttings, leaves and small clippings and trimmings shall be containerized in containers which are acceptable to the COLLECTOR and approved by the Director. Garden Trash exceeding the size and weight described in this paragraph will be picked up by a claw truck as Bulk Yard Waste.

D. For providing Garden Trash Collection Service and Bulk Yard Waste as specified herein, to all improved residential real property within TOWN, the COLLECTOR shall be compensated in accordance with Exhibit 1.

SECTION 19. DISPUTE RESOLUTION.

The parties shall endeavor to settle all issues regarding this Agreement by amicable negotiations. Issues that are not amicably settled shall be submitted to non-binding mediation in front of a mutually agreed upon mediator.

1. Mediation may be commenced by the TOWN or COLLECTOR by the service of a written request for mediation ("Request for Mediation") upon the other party. Such Request for Mediation shall summarize the controversy or claim to be mediated.

2. The mediation shall be heard in Brevard County before a single mediator.
3. All attorneys' fees and costs of the mediation shall be borne by the respective party incurring such costs and fees.
4. If mediation is unsuccessful then the parties are free to file a lawsuit in Brevard County to enforce the provisions herein.
5. The prevailing party in any litigation to enforce this Agreement, including at all appellate levels shall be entitled to an award of attorney fees.

SECTION 20. RECORD KEEPING AND QUARTERLY REPORTING

A. COLLECTOR shall maintain in its office records of the quantities of (i) Solid waste collected and disposed under the terms of this Agreement, (ii) Recyclables, by type, collected, purchased, processed, sold, donated or given for no compensation, and Residue disposed, and (iii) Yard waste collected, received, purchased, processed, sold, donated or given for no compensation, and Residue disposed. The records shall be compiled into reports and submitted quarterly as stated below.

B. COLLECTOR shall maintain an auditable journal recording each instance that Solid waste, Yard Waste or Recyclables are not collected in compliance with the terms of this Agreement or applicable ordinance or regulation. The journal shall include the reason for non-collection, including but not limited to instances of Hazardous Waste found in the Solid waste, Yard Waste or Recyclables.

C. COLLECTOR's refusal or failure to file (after written notice requesting COLLECTOR to do so) any of the reports required, or to provide required information to TOWN, or the inclusion of any false or misleading statement or representation by COLLECTOR in such report, shall be deemed a material breach of this Agreement, and shall subject COLLECTOR to all remedies, legal or equitable, which are available to TOWN under this Agreement or otherwise.

D. All reports and records required under this or any other Article shall be furnished at the sole expense of COLLECTOR.

E. COLLECTOR shall compile and keep the following information for each month during the quarter and shall deliver a written report thereon, signed by an officer of COLLECTOR,

to the Town Administrator on a quarterly basis. Quarterly reports shall be submitted no later than the 28th of the month immediately following the end of the quarter, with the first quarterly report due on or before January 28, 2015. Quarterly reports shall be submitted in hard copy and shall also be provided electronically in a format and using software acceptable to TOWN.

(a) Solid Waste Data. The average number of daily set-outs, Tons collected and delivered to the Designated Disposal Site, number of service accounts and number of containers distributed by size and Subscriber for each separate Subscriber class and for each free facility service.

(b) Recycling Data. The daily average of gross Tons collected by material type and by route for residential premises, commercial/industrial premises, and for facilities receiving free service; the average number of daily set-outs by route; the total set-outs and Tonnages, by material type and by route for the quarter; the average participation rates over the quarter relative to the total number of Subscribers in terms of weekly set-out counts; quarterly totals of Recyclables delivered to the Designated Processing Facility; and number of Recyclables containers distributed by size and Subscriber type.

(c) Yard Waste Data. The average daily gross Tons collected by route; the average daily number of set-outs by route; and the average participation rates over the quarter relative to the total number of Subscribers in terms of weekly set-out counts.

(d) Complaint Log. A copy of the Complaint Log maintained pursuant to Section 5 of this Agreement, including a summary of the type and number of complaints.

(e) Problems and Actions Taken. Narrative summary of problems encountered with collection, disposal, and processing activities and actions taken; report shall indicate the type and number of notification tags left at Subscriber accounts, instances of property damage or injury, poaching or scavenging, significant changes in operation, market factors, publicity conducted, or needs for publicity; description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

(f) Disposal Summaries. Summaries of the net amount of all Solid waste disposed during the reporting period, any fees paid, and where the waste was disposed of, by residential and commercial service sectors. TOWN may review all supporting documentation (which COLLECTOR shall retain) for COLLECTOR's summaries on COLLECTOR's business premises after giving 48 hours written notice of such a request.

SECTION 21

NOTICE

All notices required or contemplated by this Contract shall be personally served or mailed postage prepaid and return receipt requested, addressed to the parties as follows:

Collector:

Senior District Manager
Michael Lewis
7382 Talona Drive
W. Melbourne, FL 32904

Town:

Town Administrator
Town Of Malabar
2725 Malabar Road
Malabar, Florida 32950


Copy to:

Waste Management Inc. of Florida
Legal Department
2700 Wiles Road
Pompano Beach, FL 33073

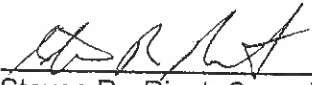
IN WITNESS WHEREOF the parties have caused their respective duly authorized representatives to execute this instrument and to affix their corporate seals on the dates shown.

(SEAL)

ATTEST


Michael Kelly
Dep. TOWN CLERK


TOWN OF MALABAR

By: 
Steven R. Rivet, Council Chair

WITNESS


RONALD KAPLAN

Waste Management Inc. of Florida

By: 
Timothy B. Hawkins

**Exhibit 1
SUMMARY OF RATES AND CHARGES**

FORM D

RESIDENTIAL PREMISES RATES

This form is for residential premises service for solid waste, recyclables, and yard waste collection, and all other services to be available to residential premises as described in Proposer's proposal and Agreement. All rates will be effective for the first year of the agreement beginning October 1st, 2014. These rates will be the contractor's sole compensation for residential premises services. All rates are for 2 times per week collection.

Cart sizes are approximate. Proposers must note any proposed variations. Variations cannot, however, be substantial.

Residential Premises Rates

Service	Rates per household /month	Additional solid waste carts % of single cart rate	Additional customer requested recycling cart
Residential Solid Waste			
Option 1 – semi-automated service – multiple size carts provided by Collector. (35,64,96 gallon)	\$16.36	4%	No Charge
Residential Recycling			
Option 1 – semi-automated service - multiple size carts provided by Collector. (35,64,96 gallon)	3.29	24%	No Charge

Residential premises includes once weekly curbside recyclables collection and once weekly yard trash collection.

Residential Breakdown of all inclusive cost

	Option 1
Solid Waste	\$10.06
White/Bulky Goods	No charge
Yard Trash	\$6.30
Bulk Yard Waste	No charge

FORM E-1

COMMERCIAL PREMISES SOLID WASTE COLLECTION SERVICE: CAN, CART AND BIN SERVICE

This form is for commercial premises, multi-family dwellings, and mobile home parks service for solid waste, recyclables, yard waste collection (as appropriate), processing and disposal, billing services, and all other services to be available to aforementioned service units as described in Proposer's proposal and Agreement. All rates will be effective for the first year of the agreement beginning October 1st 2014. These rates will be the contractor's sole compensation for these service units' services.

COMMERCIAL/INDUSTRIAL PREMISES SOLID WASTE COLLECTION SERVICE: CAN AND CART SERVICE

Service Type	Frequency	Rate per Account per Month
32-gallon can (curbside) (if additional can sizes are proposed, please add additional sheets)	1x weekly	\$ 16.17 _____
	2x weekly	\$ 18.67 _____
32-gallon can (carryout) (if additional can sizes are proposed, please add additional sheets)	1x weekly	\$ 28.17 _____
	2x weekly	\$ 30.67 _____
36-gallon cart	1x weekly	\$ 17.13 _____
	2x weekly	\$ 19.63 _____
64-gallon cart	1x weekly	\$ 17.13 _____
	2x weekly	\$ 19.63 _____
96-gallon cart	1x weekly	\$ 17.13 _____
	2x weekly	\$ 19.63 _____

COMMERCIAL/INDUSTRIAL PREMISES SOLID WASTE COLLECTION SERVICE: BIN SERVICE

(If additional bin sizes are proposed, please use table to specify)

Service Type	Frequency	Rate per Account per Month
2 c.y. bin	1x weekly	34.06
	2x weekly	68.12
	3x weekly	102.17
	4x weekly	136.23
	5x weekly	170.29
	6x weekly	204.35
4 c.y. bin	1x weekly	68.12
	2x weekly	136.23
	3x weekly	204.35
	4x weekly	272.47
	5x weekly	340.58
	6x weekly	408.70
6 c.y. bin	1x weekly	102.17
	2x weekly	204.35
	3x weekly	306.52
	4x weekly	408.70
	5x weekly	510.87
	6x weekly	613.05
8 c.y. bin	1x weekly	136.23
	2x weekly	272.47
	3x weekly	408.70
	4x weekly	544.93
	5x weekly	681.17
	6x weekly	817.40
3 c.y. bin	1x weekly	51.09
	2x weekly	102.17
	3x weekly	153.26
	4x weekly	204.35
	5x weekly	255.44

FORM E-2

COMPACTOR AND DEBRIS BOX SERVICE

This form is for compactor, debris box and on-call bin service including collection, processing and disposal, billing services, and all other services to be available to aforementioned service units as described in Proposer's proposal and Agreement. All rates will be effective for the first year of the agreement beginning October 1st, 2014. These rates will be the contractor's sole compensation for these service units' services.

COMPACTOR AND DEBRIS BOX SERVICE

Service Type	Frequency	Rate per Account per Month
Compactor Service		
3 c.y.*	1x weekly	51.85
	2x weekly	103.71
	3x weekly	155.56
	4x weekly	207.41
	5X weekly	259.27
4 c.y.*	1x weekly	71.52
	2x weekly	143.04
	3x weekly	214.57
	4x weekly	286.09
	5X weekly	357.61
5 c.y.*	1x weekly	86.42
	2x weekly	172.85
	3x weekly	259.27
	4x weekly	345.69
	5X weekly	432.11
6 c.y.*	1x weekly	107.28
	2x weekly	214.57
	3x weekly	321.85
	4x weekly	429.13
	5X weekly	536.42
* Compactor rates do not include leasing or maintenance.		

Industrial Debris Box and Bin Service (incl. C&D; per pull)

Service Type	Rate
2 c.y. bin**	\$_19.00 per pull
3 c.y. bin**	\$_29.00 per pull
4 c.y. bin**	\$_39.00 per pull
5 c.y. bin**	\$_49.00 per pull
6 c.y. bin**	\$_59.00 per pull
7 c.y. bin**	\$_69.00 per pull
20 c.y.**	\$240.00 per pull
25 c.y.**	\$255.00 per pull
30 c.y.**	\$270.00 per pull
40 c.y.**	\$285.00 per pull
Less than 30 c.y. compactor*	\$270.00 per pull
30 c.y. – 39 c.y. compactor*	\$285.00 per pull
Greater than 40 c.y. compactor*	\$285.00 per pull

* Compactor rates do not include leasing or maintenance.

** Rates include dropping off box or bin at customer location, retrieving box or bin when requested, hauling waste to, and up to 4 tons of landfill disposal. An additional charge equal to \$23.66 per ton will apply for disposal in excess of 4 tons.

*or current landfill rate

FORM E-3

SPECIAL CHARGES

All special charges will be effective for the first year of the agreement beginning October 1st, 2014. These charges will be the contractor's sole compensation for these services.

Special Service	Charge
Wheel-out service for non-qualifying households	Additional \$12.00 per month per hh.
On-call bulky waste pick-up for non-qualifying residents	\$15.00 per cubic yard per event. \$ -0- freon removal charge per unit.
On-call extra solid waste collection for residential premises	36-gallon cart: \$15.00 64-gallon cart: \$15.00 96-gallon cart: \$15.00
Cart exchange (for requests in addition to 2 x first year free exchange and subsequent 1x annual free exchange; includes delivery fee)	\$60.00 per event.
Call back for collection as a result of set-out after collection time	\$25.00 per event.
Cart replacement as a result of loss or damage through willful or intentional misuse or abuse	\$60.00 per cart including delivery fee.
Extra Commercial Pick-up:	
32-gallon can	\$ 8.00 _____ per event
36-gallon cart	\$ 8.00 _____ per event
64-gallon cart	\$ 8.00 _____ per event
96-gallon cart	\$ 8.00 _____ per event
1 1/2 c.y. bin	\$ 10.00 _____ per event
2 c.y. bin	\$ 14.00 _____ per event
3 c.y. bin	\$ 17.00 _____ per event
4 c.y. bin	\$ 21.00 _____ per event
5 c.y. bin	\$ 25.00 _____ per event
6 c.y. bin	\$ 28.00 _____ per event
7 c.y. bin	\$ 32.00 _____ per event
Key charge: Allowed when container access requires driver to remove lock to empty container.	\$ -0- _____ per container per month
Enclosure charge: Allowed when collection requires removing a container from an enclosure and replacing it when empty.	\$ 10.00 _____ per container per month
Gate service charge: Allowed when collection requires passing through a gate in order to access a container.	\$ -0- _____ per container per month
Distance charge: Allowed when a container is placed further than 10 feet from where the collection vehicle has access.	\$ 10.00 _____ per fifty (50) feet per container per month
Other: Special Collection Solid Waste outside of Container	\$ None _____ per issue
Other:	None

Other special charges not identified herein are subject to the review and approval of the Town prior to levy.	

Exhibit 2 Collection Rate Adjustment Schedule

The Collection Rate Adjustment for all rates in Exhibit 1 shall be applied on October 1, 2014, and every subsequent October 1st thereafter for the term of this Contract, as described in more detail below. All requests for a collection rate adjustment must be received in writing by the Town by July 1st of each year to be effective on October 1st of each year. The Collection Rate Adjustment shall be calculated in the following manner:

By agreement, the parties have established the Contractor's initial Operating Cost Statement, as described below. For the Contract Year beginning October 1st, 2014, the Collection Rate components shall be determined by the weight factors as shown in the Contractor's initial Operating Cost Statement. For every subsequent Contract Year thereafter for the term of this Contract, an Operating Cost Statement will not be required; the components of the Collection rate will be used as the basis for the Collection Rate Adjustment. However, the TOWN reserves the right to require the Contractor to provide an Operating Cost Statement prior to each renewal period in order to recalculate the weight of each cost component, at the TOWN's sole discretion.

1. The Operating Cost Statement shall be prepared as described in below. Operating costs are for Contractor's collection business in Brevard County.

2. The expenses of operations for the Service Area shall be broken down into one of the following five cost component categories: Labor, Fuel, Vehicle Replacement, Vehicle Maintenance, and Other. Each cost component category is assigned a weighted percentage factor based on that cost component's percentage total of all cost component categories.

The following indexes are used to calculate the adjustment for each cost component category. Each component's adjustment shall become effective on October 1st, 2014 and every October 1st thereafter for the term of this Contract.

CPI: The change in the CPI shall be calculated as the percentage change from March of the preceding year to March of the current year.

Fuel and Oil: The change in the average price of diesel fuel for the Lower Atlantic No 2 Diesel Retail Sales by All Sellers (reported by the Energy Information Association as series DDR01Z) will be used to adjust the fuel and oil cost component. The fuel and oil component shall be adjusted effective October 1st, 2014, calculated based on the average of each monthly change in series DDR01Z from May of the preceding year to April of the current year.

COST COMPONENT	INDEX	SOURCE
Other than Fuel and Oil	CPI (Unadjusted), US City Average, All Urban Consumers, All Items	CPI detailed report, published by BLS.
Fuel and oil	Series DDR01Z (Average), Lower Atlantic No. 2 Diesel Retail Sales by All Sellers	EIA, published monthly.

If either of these indexes becomes obsolete during the term of this Contract, an alternative, related index may be used, as agreed upon between the Contractor and the Town Administrator.

The percentage weight for each cost component is multiplied times the existing Collection Rate to calculate the cost associated with each component, as shown in the "Weight

Applied to Rate" column in the table below. This computation will be performed only once, in order to establish the baseline cost component values, but could be repeated at the sole discretion of the TOWN should the TOWN require of the Contractor an updated Operating Cost Statement at the time of each contract renewal. The percentage change in each index is multiplied times the Collection Rate Component to calculate the Adjusted Rate for each respective portion of the Collection Rate Adjustment. The table below is intended for demonstration purposes only, and should not be interpreted as actual Collection Rate Adjustments.

Collection Rate Adjustment Example-Initial Adjustment

Collection Component	Rate	Weight	Weight applied to Collection Rate (\$36.00)	Source	% Change of Index	Adjusted Rate	Change Effective
Other than Fuel and Oil		87.5%	\$31.50	CPI-All Items	1.20%	\$31.88	Oct. 1
Fuel and Oil		12.5%	\$4.50	Series DDR01Z (Average), Lower Atlantic. No. 2 Diesel Retail Sales by All Sellers	3.42%	\$ 4.65	Oct. 1

Collection Rate Adjustment Example –Subsequent Periods

Collection Component	Rate	Actual Rate	Source	% Change of Index	Adjusted Rate	Change effective
Other		\$31.88	Same	2.0%	\$32.52	Oct. 1
Fuel and Oil		\$4.65	Same	2.5%	\$4.77	Oct. 1

Operating Cost Statement Description

Fuel and Oil:

List all fuel and oil accounts.

Other:

Labor:

List all administrative, officer, operation and maintenance salary accounts.

Vehicle Replacement:

List all Collection and Collection related vehicle depreciation accounts.

List all vehicle lease or rental accounts related to Collection or Collection related vehicles.

Vehicle Maintenance:

List all Collection or Collection related vehicle parts accounts.

Miscellaneous:

List all other expense accounts related to the Contractor's collection business.

Overhead only includes: All insurance including general liability, fire, truck damage, extended coverage and employee group medical and life; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance expenses; customer billing expenses; office supplies; postage; trade association dues and subscriptions; advertising; employee retirement or profit sharing contributions. Overhead does not include shared overhead or expenses with affiliated businesses or payments to parent or other affiliated businesses.

The Contractor shall utilize the accrual basis of accounting for expenses.