

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, MARCH 04, 2019
7:30 PM
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:
PROCLAMATION: Irish American Heritage Month**
- D. CONSENT AGENDA:**
1. **Approve Regular Town Council Mtg Minutes of 2/04/2019, Special Mtg 2/25/2019 and Workshop Mtg of 2/25/2019.**
Exhibit: Agenda Report No. 1
Recommendation: Approve Minutes
- E. ATTORNEY REPORT:**
- F. BCSO REPORT:**
- G. BOARD / COMMITTEE REPORTS:**
T&G Committee; Park & Recreation Board; P&Z Board
- H. STAFF REPORTS:**
Administrator; PW Director; Clerk; Fire Chief
- I. PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) **Five (5) Minute Limit per Speaker.**
- J. PUBLIC HEARINGS: 4**
2. **Amend LDC (Ord 2019-01)**
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTIONS 1-12.5 OF ARTICLE XII, ENTITLED "PROCEDURES FOR ADOPTING, SUPPLEMENTING OR AMENDING THE LAND DEVELOPMENT CODE" OF THE LAND DEVELOPMENT CODE OF THE TOWN; REMOVING THAT PORTION OF SECTION 1-12.5 OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO THE DECISION MAKING AUTHORITY OF THE PLANNING AND ZONING BOARD; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING AN EFFECTIVE DATE.
Exhibit: Agenda Report No. 2
Recommendation: Adopt Ordinance 2019-01
3. **Amend LDC (Ord 2019-02)**
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO TABLE 1-3.3(A) IN ARTICLE III OF THE LAND DEVELOPMENT CODE, PROVIDING FOR FINDINGS; PROVIDING FOR NEW SETBACK ALLOWANCES IN RR-65 ZONING FOR ACCESSORY STRUCTURES ONLY; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.
Exhibit: Agenda Report No. 3
Recommendation: Adopt Ordinance 2019-02
4. **Amend LDC Art III Table E (Ord 2019-03)**
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE III, DISTRICT PROVISIONS, SECTION 1-3.3.E. AND TABLE 1-

3.3(E) OF THE LAND DEVELOPMENT CODE, PROVIDING CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES ON CERTAIN ROADS, CORRECTING A SCRIVINORS ERROR AND REMOVING CONFLICT WITH COMPREHENSIVE PLAN ON RIGHT OF WAY WIDTH FOR MINOR COLLECTORS AND REMOVING BRIAR CREEK BOULEVARD FROM LIST OF MAJOR COLLECTOR STREETS; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Adopt Ordinance 2019-03

5. Amend LDC Art V regarding Setbacks (Ord 2019-04)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE V, GENERAL PROVISIONS, SECTION 1-5.10 OF THE LAND DEVELOPMENT CODE, PROVIDING FOR CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES; PROVIDING FOR REFERENCE TO ARTICLE III DISTRICT PROVISIONS TABLE 1-3.3(A) AND TABLE 1-3.3(E) IN THE LAND DEVELOPMENT CODE; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Adopt Ordinance 2019-04

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

**L. ACTION ITEMS:
ORDINANCES for FIRST READING: 0
RESOLUTIONS: 1**

6. Adopt Resolution Providing FDOT Acquisition of Fern Creek 1.1-acre Parcel

Exhibit: Agenda Report No. 6

Recommendation: Approve Agreement

MISCELLANEOUS: 0

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

M. DISCUSSION/POSSIBLE ACTION:

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

O. REPORTS – MAYOR AND COUNCIL MEMBERS

P. ANNOUNCEMENTS:

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

Q. ADJOURNMENT: -

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

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

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 1
Meeting Date: March 04, 2019

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

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

Attached are the summary minutes for the following meeting(s):

- Town Council Regular Meeting – 2/4/2019
- Town Council Special Meeting – 2/25/2019
- Town Council W/S Meeting – 2/25/2019

The minutes are the official record of the actions taken by Council.

ATTACHMENTS:

Draft Minutes of 2/4/19, 2/25/19 Special, 2/25/19 Workshop

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
FEBRUARY 04, 2019 7:30 PM**

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

A. CALL TO ORDER:

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

B. ROLL CALL:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DICK KORN

DANNY WHITE

MATT STINNETT

KARL BOHNE

DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

PW Director Tom Miliore was present.

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:

TA asked to add an item related to Hall Road drainage project. Added as #8.

D. CONSENT AGENDA:

1. Regular Town Council Meeting Minutes 1/07/19

Recommendation: Request Approval

MOTION: CM Vail / CM Korn to approve the 1/7/19 regular meeting minutes as submitted.

Discussion: none. **Vote:** 5 Ayes, 0 Nay

E. PRESENTATION BY DAVE MAZZA OF DANA FINANCIAL ADVISORS:

Greg Peters is the client rep for Dana in Florida. Company did hire another analyst, so employment is up to 44. The company did also win "best places to work" for the 7th year in a row. He then turned it over to Dave Mazza, who then went over the portfolio. Dave stated they presented the proposed portfolio last summer and went through it officially at a Council presentation and were brought on they got things in place and started the first of August. Based on the portfolio, Town can expect \$20-25K in interest income in 2019. They use only triple AAA rated US and govt securities, that is their specialty with no bonds going over three years. Mayor thanked them.

F. ATTORNEY REPORT: nothing

G. BCSO REPORT: For Nov and Dec BCSO is averaging 210 calls per month. End of Dec and early Jan they had 15 vehicles burglarized and of all of them were unlocked. Five of the cars had guns in them that were stolen. They did get the culprit, a kid posted on social media with some of the guns. It doesn't look like they will recover the guns. The same problem goes with golf carts, 4-wheelers and ATVs; they are kept in the driveway with the keys in them.

H. BOARD / COMMITTEE REPORTS:

Drew Thompson, Chair, T&G Com: Mayor read report from Drew. Working on a possible spring meeting for the South Brevard Trail connection development with parties from Palm Bay, G-V, Malabar and the Space Coast TPO in attendance. He is going be our rep for the Tourism and Transit Summit in Cape Canaveral on 2/14/19.

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

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

H. STAFF REPORTS:

ADMINISTRATOR: They have got the pad poured for the new PW bldg. Getting close to being able to get into Stillwater and clean the ditch. Possibly will have an agreement ready for Council by next meeting.

PW DIRECTOR: Tom Miliore, Jan we finished all the services on all vehicles. Hall Road project got 200' of pipe plus placement of a catch basin. Ditcher is up and running. Did the west side of

Malabar Woods Blvd and part of Glatter, east of Marie Street. Next is west end of Atz Road. PW also picked up the debris on Weber Road from the vehicle accident. CM White thanked him for grading Hunter Lane. He then asked about repairing the edges of roads. Tom said they will get to it.

CM Korn said there is a pothole on Weber just south of Malabar. Atz and Weber chunk of asphalt missing. Same at Hall and Old Mission. Also near Dr. Leedy's entrance. Those were the only places he saw.

CLERK: Said we have updated all of Councils Code Books and Land Development Codes through Supplement 22. Staff is working on getting several more ordinances adopted and then submitting a Supplement 23. Once this is done, we will update the Board's Code Books. The most current Code is available through the Town's website and directly from Municode.com.

FIRE CHIEF – not present

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

Five (5) Minute Limit per Speaker. Speaker Card:

J. PUBLIC HEARINGS/SPECIAL ORDERS: 0

K. UNFINISHED BUSINESS/GENERAL ORDERS

L. ACTION ITEMS:

ORDINANCES FOR FIRST READING; 4

2. Amend LDC (Ord 2019-01)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTIONS 1-12.5 OF ARTICLE XII, ENTITLED "PROCEDURES FOR ADOPTING, SUPPLEMENTING OR AMENDING THE LAND DEVELOPMENT CODE" OF THE LAND DEVELOPMENT CODE OF THE TOWN; REMOVING THAT PORTION OF SECTION 1-12.5 OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO THE DECISION MAKING AUTHORITY OF THE PLANNING AND ZONING BOARD; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Ordinance read by title only

MOTION: CM Rivet / CM Ball to approve First Reading of Ord 2019-01.

Discussion: Clerk Franklin explained that while reviewing the LDC for the land use and zoning change the staff identified a conflict in the language giving final authority to approve or deny such changes to the P&Z Board. The Attorney has corrected the wording.

Roll Call Vote: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye.

Motion carried 5 to 0.

3. Amend LDC (Ord 2019-02)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO TABLE 1-3.3(A) IN ARTICLE III OF THE LAND DEVELOPMENT CODE, PROVIDING FOR FINDINGS; PROVIDING FOR NEW SETBACK ALLOWANCES IN RR-65 ZONING FOR ACCESSORY STRUCTURES ONLY; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Ordinance read by title only

MOTION: CM Vail / CM White to approve First Reading of Ord 2019-02.

Discussion: Clerk Franklin said this ordinance allows for reduced side and rear setbacks for accessory structures only and only in RR-65 zoning. This was originally approved by Council in 2012.

Roll Call Vote: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye.

Motion carried 5 to 0.

4. Amend LDC (Ord 2019-03)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE III, DISTRICT PROVISIONS, SECTION 1.3.3E AND TABLE 1-3.3(E) OF THE LAND DEVELOPMENT CODE, PROVIDING CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES ON CERTAIN ROADS, CORRECTING A SCRIVINORS ERROR AND REMOVING CONFLICT WITH COMPREHENSIVE PLAN ON RIGHT OF WAY WIDTH FOR MINOR COLLECTORS AND REMOVING BRIAR CREEK BOULEVARD FROM LIST OF MAJOR COLLECTOR STREETS; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Ordinance read by title only

MOTION: CM White / CM Vail to approve First Reading of Ord 2019-03.

Discussion: Clerk Franklin stated that this ordinance clarifies language in Article III, District Provisions on when to use Table 1-3.3(A) and when to use Table 1-3.3(E). It also removes two conflicts with the Town's Comprehensive Plan, removing Briar Creek Boulevard from the list of Major Collectors in Table "E" and changing the width of Minor Collectors to 70 feet as stated in the Town's Comprehensive Plan.

Roll Call Vote: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Nay; CM White, Aye. Motion carried 4 to 1.

5. Amend LDC Art V regarding Setbacks (Ord 2019-04)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE V, GENERAL PROVISIONS, SECTION 1-5.10 OF THE LAND DEVELOPMENT CODE, PROVIDING FOR CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES; PROVIDING FOR REFERENCE TO ARTICLE III DISTRICT PROVISIONS TABLE 1-3.3(A) AND TABLE 1-3.3(E) IN THE LAND DEVELOPMENT CODE; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Ordinance read by title only

MOTION: CM Rivet / CM White to approve First Reading of Ord 2019-04.

Discussion: Clerk Franklin stated that Article V, General Provisions also provides setback information for principal structures. This ordinance directs the applicant to use Tables 1-3.3 (A) or Table 1-3.3(E) in Article III, District Provisions.

Roll Call Vote: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye. Motion carried 5 to 0.

RESOLUTIONS: 1**6. Amend Administrative Fees (Reso 02-2019)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO THE AMENDMENT OF ADMINISTRATIVE AND PERMIT FEES REQUIRED TO BE ESTABLISHED BY VARIOUS ORDINANCES OF THE TOWN OF MALABAR; PROVIDING FOR REPEAL OF RESOLUTION 4-2014; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Reso read by title only

MOTION: CM Vail / CM Ball to approve Reso 02-2018.

Discussion: Franklin explained the Council added the golf cart registration in 2014 but had not updated the fees since 2004. The dirt road application fees have not been updated since 2003. The need to increase some of these rates was realized when we have reviewed some of the costs we pay out for recent vacate, variance and the most recent LU and Zoning change. CM Ball said we should do this again in one year.

Roll Call Vote: CM Ball, Aye; CM Vail, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye. Motion carried 5 to 0.

MISCELLANEOUS: 1

7. Approve Temporary Trailer Placement at 2820 Smith Lane while home is constructed – Applicants, Mr. and Mrs. Logan

Mr. and Mrs. Logan came to podium and explained they are building their single-family home on Smith Lane.

MOTION: CM Korn / CM White to approve temporary placement of trailer at 2820 Smith Lane while home is completed. Discussion: none

Vote: All Ayes.

8. TA explained the project on west end of Hall Road and he would like to contract this out to get it completed and to get the repair done. Wants direction from Council. He has not received three bids on what it would cost to complete this segment of the project but is working in that direction and he suspects it will be over 10K. Mayor and Rivet understand he is looking for authorization to get the bids and then select the lowest qualified bid and move forward. Council then began discussion the benefits of the open ditch and piped culverts in ditches. They understood that the property owners would pay for the pipe in this area. If this is not the case, then perhaps they should restore the open ditch.

TA explained the next portion of the project would be to connect the ditch between Raulerson and Hall and then to Weber. Time is his problem. It is more involved that the team is equipped for. He would like his team to get back to town wide stormwater projects and sub this out.

CM Ball asked what the ramifications. TA said it is the Town's ROW.

CM White said it is not going to make the homeowner happy, the ditch is not just for you, it is for all the people upstream. Previous TA thought the pipe would be better because you wouldn't have to do constant maintenance.

Tom said if they pull it out it will be the 3rd time. There is a ditch there. CM Rivet would like to see permanent pipes in ditches. TA said an additional point to this is that there are ponds in the area that will be draining into the ditch. That was another reason for the piping in this area.

CM White wants a special meeting to approve anything related to this repair, completion. CM Rivet said we should also get a check from the homeowner that asked for the pipe. Atty asked if would be appropriate to get two sets of bids; one for completion of the pipe project and the other for restoring the open ditch.

MOTION: CM / CM White Vail to release PW from project. VOTE: All Ayes. Special Council meeting on Feb 25, 2019 at 7pm for short regular meeting to vote on the bids/projects and then WS at 7:30pm.

N. DISCUSSION/POSSIBLE ACTION:

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

P. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball: Doing elevations and surveys for the elevations. TA has been meeting and working with residents and the engineer to develop maps. He is referring to professional surveying. CM Ball asked about the ditcher. TA said the ditcher is working great. Did Malabar Woods Blvd. Atz, west of Weber is next. He is adapting and overcoming. Council discussed it value to the ditch. By getting the organic matter cleaned out the water will perk better. CM Ball asked Matt to do a report to Council on the TPO.

CM Vail: Drainage concerns, a drainage survey is needed before we can develop a drainage plan. Have one done by an expert and upload to Google Earth. All culverts elevations, etc. See what it would cost for a professional and how soon it could be completed. Sign ordinances. Come up with a plan to bring the stormwater drainage system into the Towns rights-of-way.

CM Rivet: Thanks for the FD for Chief Joe, good turnout from the FD for the funeral of Mrs. Giantonio.

CM Korn: Told CM White, if he is attending the IRL meeting in G-V to stay focused on riverfront usage. If we want to use the triangle, Jerry Sampson of FIND said they have grant money and could fund it. CM Ball and CM White both said that the FIND money requires a match. It is a 50/50 grant. CM Korn then said Corey Road and Weber Road are parallel. Back in 1989, 1990 there was requirement for homeowners to dig ditches to bring stormwater from the back to ditch on Weber and Corey. Problem is the water then has to be directed somewhere. Regarding the water coming off I-95, Abby of St. Johns would be willing to help us with FDOT. He said about the research paper sent to Council via email about Raulerson Lane; how many other streets are like that? Council needs to address these road problems. CM White said that the road was allowed to be put in due to a hardship of only having 25-foot width. They have had 35 years to improve the roadway to Town standards.

CM White: Going to G-V for the IRL with Stu Glass of Indialantic. There will be four such meetings. STEM (scientific, technology, engineering and mathematics). He is attending the morning portion for information purposes. The Trailhead signage that was removed from SE corner of Marie and Malabar will go back up soon and will be visible from both east and west bound traffic.

Mayor: March 11, the SCLC dinner is hosted by G-V and we are the co-host. Get your reservations to Clerk for this dinner meeting. Should have a good turnout and hopes all of Council will attend. The Hometown News now contains a full page of articles in the last issue of every month. It gets information to residents on a regular basis and is much more affordable at \$100 per month compared to the postage alone for the newsletter. Clerk Franklin stated that Council could amend Code to allow home delivery and then all homeowners could get it delivered. She gave brief history of why nuisance section was changed. Could easily be changed back.

Q. ANNOUNCEMENTS: Openings on Board of Adjustment, Trails and Greenways and Park and Recreation Board.

R. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 8:50 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 3/4/2019

**SPECIAL MALABAR TOWN COUNCIL MEETING MINUTES
FEBRUARY 25, 2019 7:00 PM**

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

A. CALL TO ORDER:

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

B. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY, Present
VICE CHAIR:	STEVE RIVET, Present
COUNCIL MEMBERS:	GRANT BALL, Present
	BRIAN VAIL, Present
	DICK KORN, Present
	DANNY WHITE, Present
	MATT STINNETT, Present
	TOM MILIORE, Present
	MORRIS SMITH, Present
	DEBBY FRANKLIN, excused

TOWN ADMINISTRATOR:

PW DIRECTOR:

TOWN ENGINEER:

TOWN CLERK/TREASURER:

C. COUNCIL ACTION:

1. Decision on bid options to complete the Hall Road Drainage Project

Mayor turned meeting over to Matt Stinnett, TA.

Stinnett – there are three bids with the lowest being Ken Farrington, Tractor & Land Clearing, Inc. - \$48,726.

Korn asked for clarification on what the bids / work entailed. Stinnett explained the scope of work was from Tillman Canal to Eastside of Flashy. Increasing the capacity for the area, ultimately connecting to Rollerson's ditch on to Cameron's creek. Morris Smith – addressed Korn's concerns re: Weber / Hall.

White - Bid says "provided pipe" – how much pipe have we already bought or how much more will we need to buy? Stinnett clarified we have already purchased the pipe. White is concerned this is a poorly conceived project. Stinnett said the bid respondents indicated ditch only vs pipe only would be approximately equal bids. Concerned we are going to spend \$50,000 and won't have fixed the problem and will have future additional expense. Mayor reminded we can only work one section at a time. Ball commented that in order to do the ditch only, we would first need to remove the existing pipe and then cut the ditch. Vail commented that we have made a commitment to the residents that they would have a culvert pipe. Once the pipe is correctly installed, it will result in a swale resident will then be able to maintain themselves, saving the Town future maintenance costs rather than a ditch that would require continual cleanout and mowing / maintenance. White's concern is the original scope was only to fix the pipe that was wrong and ditch the rest. Vail responded this is the agreement we made with the resident - we need to finish this project and then if this comes up again we would revisit and determine if this was successful enough to warrant doing it again. White commented that the promise was between two parties and to his knowledge the resident hasn't complied with their part of the agreement. Stinnett clarified there was no written agreement, it was a verbal agreement between the resident and the prior TA. Resident clarified (from the audience) there was email correspondence between he and the prior TA offering the ditch vs culvert option. He chose the culvert option with payment to be made at completion of the project.

Mayor turned the time over to Engineer Smith to address whether this project will get us to the Town's ultimate goal. Smith said yes, it would eventually put the stormwater where the Town can manage it without running across private property where we have no control. Discussion as to whether code still requires water be moved from the rear of a property to the front to be carried off by ditches.

Gene Cioffi – 1560 Gilmore Street – says there is still code that requires ditches on both sides and a swale so all water was directed to the front of the property to the ditch. Gave examples from his property.

Mayor asked for additional discussion or motion.

Motion: Rivet / Vail to accept the Farrington bid as read. Discussion:

White raised concerns that we are paying more than required by the project. \$8,000 of the \$48,000 estimate is repairing the culverts in question. How much is the pipe cost in relation to the rest of the project? Is this something we want to do again with another resident? His vote would be no. Mayor – this project entails fixing two culverts and an approximate additional 575 feet. Vail – reiterated that we (Council) need to take a hard look if we are ever asked to do this again. This particular project was a test project and will help us go forward to learn and improve. Korn – this project, if done right, will benefit the residents along Flashy as well. Additional Council Members agreed it will also benefit additional residents as well. White wanted to make sure we know that he feels this was a “screw up” and understands we should look at this as a model. Do we continue to go forward? What would be the cost to just rip up what is there? If we don't continue we will never know if it would have worked which is the only reason he's agreeing.

Jim Roulston - 2480 Malabar Road – we have x feet of plastic pipe going in the ground. We already have some that has popped up, when the water table comes up, is it going to pop up again? Should it have been concrete instead of plastic? Miliore clarified the new pipe will have more than 22” of coverage – the original problem was the pipe was too large allowing it to pop up.

Smith – addressed White's concern about pulling out the existing pipe and going with ditch – that would require repairing 3 driveways at a cost of \$8,000 each which is why the contractors bid it being cheaper to lay pipe than do ditch. White said he wasn't talking about pulling out any existing pipe, just going forward by repairing the popped pipe and continuing with ditch. According to the bid, it is \$8,000 to fix the popped pipe and \$40,000 to add additional culvert.

Korn suggested we not put pipes down Flashy Lane and keep the test to what is already there.

Keith Kessler – 460 Hall Road – concerning extension of ditches along Flashy heading north, it appears the road has shifted to the west significantly. The ditch was enlarged in 2002/2003 and the grade of the property is caving into the ditch. If the ditch is enlarged any more, the grade will cave into the ditch and his fence will fall. He feels that is one of the reasons we were looking at culvert instead of ditch.

Resident – wants to know where the dirt went and how soon will this be fixed. Was supposed to be done previous September.

Vote of Motion to accept the Farrington bid for \$48,726: Ayes, 5; Nay, 0. Motion carried.

D. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 7:45 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

MALABAR TOWN COUNCIL WORKSHOP MEETING MINUTES

FEBRUARY 25, 2019

7:30 PM

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

A. CALL TO ORDER:

Chair, Mayor Patrick Reilly called the meeting to order at 7:45 pm.

B. ROLLCALL OF THOSE IN ATTENDANCE:

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DICK KORN

DANNY WHITE

TOWN ADMINISTRATOR:

MATT STINNETT

PW DIRECTOR:

TOM MILIORE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN, excused

TOWN ENGINEER

MORRIS SMITH

PUBLIC WORKS DIRECTOR

TOM MILIORE

C. WORKSHOP ACTION: Discuss Public Works Projects and timelines.

Mayor – Discussion of Master Plan for Stormwater

Stinnett – Turned time over to Smith, Engineer to discuss current and future stormwater within the Town.

Smith presented the existing stormwater system through the Town, where the water originates, where it goes and where it leaves the Town. General discussion about the current situation and possible sites that need work.

Rivet recognized we need to complete the studies, but are there any projects we can work on during the remaining 3-4 months of dry season that we have the data to support? Smith – referred him to Miliore to guide us to the projects best suited to use the new equipment we have. One of the first things he (Smith) did was get Debby a laser level, showed Staff how to calculate grades and they have never asked again. The Staff know how to use the tools when the tools are provided to them. He suggests we hire somebody to prepare what we are looking for but the things that can happen in-house are the conversations between Council and Public Works to prioritize. Told how he worked in Vero, recommended that we “design” during the wet season and do the actual work during the dry season. We should also have “post mortem” discussions so we can learn from each project. Vail asked about overflow from Twin Lakes to Goat Creek.

Smith – We have an inventory of all Town culverts from 2000-2004, but there are no elevations in that inventory. We need to combine the information we have with the elevations. That would be our starting point. All the elevations of major intersections were done last year. The fact that each culvert pipe in the town is different is because we have no master plan. Once we have a Master Plan, we will know exactly where they should go. Smith has the necessary computer tool (Earth Point) to allow us to go forward. The Building Dept/Public Works should probably have that as well, it is \$900 per year subscription. Mayor wondered what Palm Bay had and if it was compatible so we can work together.

Stinnett – we have a couple of projects Smith has worked on to plan and design that are essentially ready and we have a few move into the design phase, but we have to evaluate how we are going to use our crew. We only have a few months left and feels we really need to focus on catching up on maintenance that we had to forgo to work on the Hall project for

the past several months. We have the equipment now that we needed, he and Miliore have worked together to identify the areas we will make the biggest impact right now.

Stinnett – provided update on Fern Creek culvert pipe under Malabar Rd for the FDOT project, sent to FDOT to give us the necessary numbers on. Important projects to be designed are Gilmore, surveyed and would like to move into design so we can continue to address the issue and get the Gilmore, Weir St and Allen taken care of. Already touched on Jordan / Atz and would like to move forward on the design of that sector. Also Hall out to Weber – wants to get that designed as soon as we can so we can move on that as well. Would like to go through with the Gradall and ditcher head and clear out the cattails, making sure our culverts are cleared. Some areas specifically north side of Atz where the wires were hanging down. The wires are still down, belong to AT&T, they are aware and Town expects they will have their project completed in the next 45 days, then FP&L has to move their utilities to the new poles. From that point, Town will be able to maintain and get the water flowing appropriately. We need to address east of Weber between Hall and Atz – water ponds there – need to evaluate whether we need to restructure the facility or if simple maintenance would be sufficient. Vail asked if we have adequate “shovel ready” projects to keep Public Works busy for the next month? Stinnett said he and Miliore have evaluated and identified maintenance projects to be done. There is more than enough maintenance to keep Public Works busy for the remainder of the year and with the limited time we have left of dry season he feels it is important we complete as much of the maintenance as possible. White said he felt “shovel ready” was “projects” as opposed to ongoing maintenance. Our emphasis should be on those areas that have specific arteries that don’t have water flowing. He would like to see a schedule of upcoming projects and the sequence. Ball requested that it included completed and accomplished so we have something to refer to when residents question.

Korn – wanted to make sure we compliment Smith’s efforts on behalf of the Town, in some cases, even over and above his own private practice. Thank you for your service.

Vail – would like to see numbers of a drainage survey. Can we get some ideas what we are looking at expenditure wise for a survey of the entire town. Bring in outside company to show where the water is coming from, where its going, what we have in place. He doesn’t believe we should use historical ditches. Primary should be right-of-way ditches that we can maintain.

White – wouldn’t the survey and the master plan be part of one entire plan?

Stinnett – with the survey in hand it will allow us to go forward with a master plan. No contractors will work with us until we have our master plan in hand.

White – wanted to clarify Smith is doing culverts correctly – the reason they are varied is he has to go according to existing.

Vail – we can’t go forward without a master plan for the future.

White – requested for the next regular meeting that we go into the future 30 days of a scheduled maintenance for the existing ditches so we can get started and know where we are.

Stinnett – the work we did west of the concrete road (Malabar Woods) improved that localized area – general discussion about possible further work to alleviate the water ponding.

Korn – we need to make sure the “exit” for the stormwater is open and work backward.

Mayor – we will set another workshop date at the next Council meeting.

D. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned at 9:00 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

Collette Buffaloe,
Recording Clerk

Date Approved: 3/4/2019

DRAFT

**TOWN OF MALABAR
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2
Meeting Date: March 04, 2019**

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

SUBJECT: Second Reading of Ord 2019-01 Amending Art XII

BACKGROUND/HISTORY:

Attached is an ordinance that makes corrections to Article XII that were identified while going through the recent land use and zoning change and the Town Attorney has made the legal corrections.

Legally advertised in Florida Today February 14, 2019.

ATTACHMENTS:

Ordinance 2019-01

ACTION OPTIONS:

Adopt Ord 2019-01

ORDINANCE 2019-01

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO SECTIONS 1-12.5 OF ARTICLE XII, ENTITLED "PROCEDURES FOR ADOPTING, SUPPLEMENTING OR AMENDING THE LAND DEVELOPMENT CODE" OF THE LAND DEVELOPMENT CODE OF THE TOWN; REMOVING THAT PORTION OF SECTION 1-12.5 OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO THE DECISION MAKING AUTHORITY OF THE PLANNING AND ZONING BOARD WHICH ARE IN CONFLICT WITH THE TOWN CHARTER; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 3.05 of the Town Charter provides for the specific authority on the part of the Town Council to create advisory boards; and,

WHEREAS, Section 3.01 (5) of the Town Charter generally provides that the Town Council shall have and is required to "Perform such other duties as may be prescribed in ordinances *consistent with the Charter*"; and,

WHEREAS, Section 2-250 of the Town's Code of Ordinances created the Town Planning and Zoning Board which "is advisory in nature"; and,

WHEREAS, the Town attorney has opined that the sub-section C of Section 1-12.5 which reads: "If the Planning and Zoning Board denies the requested zone change or amendment, this action shall be deemed final unless such action is appealed to the Town Council pursuant to Section 1-12.3(C)(4)" conflicts with the Section 3.05 of the Town Charter which provides for the creation of advisory boards; and,

WHEREAS, sub-section C of Section 1-12.5 improperly granted the Planning and Zoning Board apparent final decision making which is in conflict with the Town Charter and Section 2-250 concerning the powers of advisory boards and improperly grants the Town Planning and Zoning Board final decision-making authority concerning zoning matters which is a power reserved unto the Town Council; and,

WHEREAS, where a conflict exists between the Charter and the Code, the Charter prevails.

NOW THEREFORE BE IT ORDAINED, by the Town Council of the Town of Malabar, Brevard County, Florida, that:

SECTION 1. Section 1-12.5 of Article XII of the Town Land Development Code, is hereby amended in full as follows:

"Section 1-12.5. - Procedures for adopting, supplementing or amending the land development code.

A. *Initiating Amendments to the Land Development Code.* Amendments to the Land Development Code may be initiated by:

1. *Town Council.* The Town Council may initiate an amendment to the land

development code by approving a written statement expressing its intent to amend this code and shall submit such written statement and any relevant supportive material to the Town Planning and Zoning Board for review and action pursuant to Section 1-12.5. C., 1-12.6(C) [1-12.5(C)] of this Chapter [Code].

2. *Planning and Zoning Board.* The Town Planning and Zoning Board may initiate a land development code amendment.

3. *Property Owner(s).* An amendment to the land development code may be initiated by a petition signed by a property owner, or the property owner's authorized agent. Such petition shall be submitted to the office of the Town Clerk together with a fee as shall be determined by resolution of the Town Council. As many lots or parcels of property as the applicant may desire may be included in any single petition if they constitute one contiguous. The petition shall be submitted on an application form prescribed by the Town Clerk. The application shall include, but not be limited to, the following:

(a) *Property Description.* The application shall describe by legal description and by street address, where possible, the property to be affected by the proposed change

(b) *Current and Proposed Comprehensive Plan Land Use Map Designation.* The current and proposed Comprehensive Plan Land Use Map designation for the subject property shall be identified.

(c) *Current and Proposed Zoning.* The current and proposed zoning for the subject property shall be identified.

(d) *Existing and Proposed Use.* The existing and proposed use of the subject property shall be stated.

(e) *Disclosure of Ownership.* The application shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for rezoning is sought, except publicly held corporations, in which case the names and addresses of the corporate officers shall be sufficient.

B. *Administrative Review.* The Town Clerk shall forward zoning change petitions, for which appropriate fees have been submitted, to all appropriate administrative staff for their review and comment. The application shall be reviewed for conformance with the requirements of this Chapter [Code].

C. *Planning and Zoning Board Review.* The Planning and Zoning Board, regardless of the source of the proposed zone change petition, shall hold a public hearing(s) thereon, with due public notice. The Town Planning and Zoning Board shall submit a written report and recommendation concerning the proposed changes of zoning to the Town Council for official action. ~~If the Planning and Zoning Board denies the requested zone change or amendment, this action shall be deemed final unless such action is appealed to the Town Council pursuant to Section 1-12.3(C)(4).~~ In its deliberations the Planning and Zoning Board shall consider the following criteria:

1. *Consistency with Plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service (LOS) standards and the concurrency management program. Any inconsistencies shall be identified by the Planning and Zoning Board.

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

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

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

5. *Adequate Public Facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

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

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

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

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

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

~~D. *Action Following Reviews By Town Planning and Zoning Board.* If an appeal to a decision of the Planning and Zoning Board is filed, the Town Clerk shall transmit copies of the petition, the comments and the minutes of the Planning and Zoning Board meeting to each member of the Town Council at least seven (7) days before the Council shall consider the appeal. The Town Clerk shall notify the applicant of the time and place of the meeting at which the Council will hear the appeal. Should the Council tentatively approve the petition, the Town Council will proceed to hold a public hearing(s) on the petition.~~

~~Should the Town Planning and Zoning Board approve the petition, the Town Clerk shall transmit copies of the petition, [and] all comments and the minutes of the Planning and Zoning Board meeting to each member of the Council at least seven (7) days before the Council shall consider the petition. Should the Council tentatively approve the petition, public hearing(s) shall be held on the petition.~~

ED. *Town Council Review.* The Town Council shall hold a public hearing on the requested zone change petition or amendment, with due public notice, if any change is to be considered and shall then act on the proposed change. An affirmative vote of three (3) members of the Town Council is required for favorable action on a zone change petition or amendment for which the Town Planning and Zoning Board has recommended denial. In its deliberations the Town Council shall consider the criteria identified in Section 1-12.5(C) above together with the findings and recommendations of the Planning and Zoning Board. Any modifications or revisions to the Town Planning and Zoning Board recommendation which involve a greater area of land to be rezoned or a more intensive zoning classification shall be the subject of an additional public hearing before the Town Council with due notice prior to action by the Town Council.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Inclusion in Code. It is the intention of the Town Council of Malabar that the provisions of this ordinance shall become and be made a part of the Town Code, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. Effective Date. This ordinance shall take effect upon adoption.

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

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

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Malabar Town Council, on this 4th day of March 2019.

TOWN OF MALABAR

1st Reading: 2/4/19 5 to 0
2nd Reading: 3/4/19

By:

Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, CMC
Town Clerk/Treasurer

(seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3
Meeting Date: March 04, 2019**

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

SUBJECT: Second Reading of Ord 2019-02 Amending Table 1-3.3(A)

BACKGROUND/HISTORY:

Attached is an ordinance that amends Article III, District Provisions, Table 1-3.3(A) providing for reduced side and rear setbacks for accessory structures only in RR-65 zoning. This was a recommendation by the Planning and Zoning Board that Council approved at their meeting on August 6, 2012.

Legally advertised in Florida Today February 14, 2019.

ATTACHMENTS:

Ordinance 2019-02

ACTION OPTIONS:

Adopt Ord 2019-02

ORDINANCE 2019-02

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO TABLE 1-3.3(A) IN ARTICLE III OF THE LAND DEVELOPMENT CODE, PROVIDING FOR FINDINGS; PROVIDING FOR NEW SETBACK ALLOWANCES IN RR-65 ZONING FOR ACCESSORY STRUCTURES ONLY; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town Council of the Town of Malabar adopted size and dimension regulations for all zoning classifications for principal structures; and

WHEREAS, The Town Council has determined it should amend those regulations to provide for new setback regulations for accessory structure only in RR-65 zoning in the Land Development Code.

WHEREAS, The Town Council approved the recommendation from the Planning and Zoning at their meeting on August 6, 2012 establishing a lesser setback for accessory structure in RR-65 Zoning based on the height of the accessory structure and reducing the setback to the height of the accessory structure or 15 feet, whichever is less. Under no conditions will the setback be less than 15 feet from the side or rear property lines.

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

Section 1. Findings. The above statements are correct.

Section 2. Table 1-3.3(A) Size and Dimension Regulations in Article III of the Land Development Code is hereby amended to provide for a footnote "7." That provides for the following language:

"7. In RR-65 Zoning, side and rear setback may be reduced for accessory structures to equal the height of the accessory structure but under no condition be reduced to less than 15 feet. If the height of the accessory structure height is 20 feet, the side and rear setbacks for that building would be 20 feet."

Section 3. Codification.

It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that Article III, District Provisions, Section 1-3.3(E) and Table 1-3.3(E) be codified into the next supplement update of the Land Development Code of the Town of Malabar, Florida.

Section 4. Severability.

In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 5. Conflicts.

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

Section 6. Effective Date.

This ordinance shall take effect immediately upon its adoption.

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

- Council Member Grant Ball _____
- Council Member Brian Vail _____
- Council Member Steve Rivet _____
- Council Member 4 Dick Korn _____
- Council Member 5 Danny White _____

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Town of Malabar Town Council on March 4, 2019.

TOWN OF MALABAR

By:

Mayor Patrick T. Reilly, Council Chair

1st Reading: 2/4/19 5 to 0

2nd Reading: 3/4/19

(seal)

ATTEST:

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

Approved as to Legal Sufficiency:

Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4
Meeting Date: March 04, 2019**

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

SUBJECT: Second Reading of Ord 2019-03 Amending Table 1-3.3(E)

BACKGROUND/HISTORY:

Attached is an ordinance that amends Article III, District Provisions, Section 1.3.3E and Table 1-3.3(E) providing for principal building setbacks, correcting Minor Collector road width to 70 feet and removing Briar Creek Boulevard from the list of Major Collector.

This removes the conflict with the Comprehensive Plan.

Legally advertised in Florida Today on February 14, 2019.

ATTACHMENTS:

Ordinance 2019-03

ACTION OPTIONS:

Adopt Ord 2019-03

ORDINANCE 2019-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE III, DISTRICT PROVISIONS, SECTION 1.3.3E AND TABLE 1-3.3(E) OF THE LAND DEVELOPMENT CODE, PROVIDING CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES ON CERTAIN ROADS, CORRECTING A SCRIVINORS ERROR AND REMOVING CONFLICT WITH COMPREHENSIVE PLAN ON RIGHT OF WAY WIDTH FOR MINOR COLLECTORS AND REMOVING BRIAR CREEK BOULEVARD FROM LIST OF MAJOR COLLECTOR STREETS; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Malabar adopted size and dimension regulations for all zoning classifications for principal structures based on the guidelines in the Comprehensive Plan; and

WHEREAS, The Town Council has determined there is a need to clarify language in title and body of Section 1-3.3E and Table 1-3.3(E) of Article III, District Provisions, to state the setbacks are for principal structures; and

WHEREAS, The Town Council has determined there is a need to correct the list of major collector streets to delete Briar Creek Boulevard and to correct the right of way width for minor collector streets to 70 feet to eliminate the conflict with the Comprehensive Plan.

WHEREAS, The Town Council approved these recommendations from the Planning and Zoning at their meeting on August 6, 2012.

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

Section 1. Findings. The above statements are correct.

Section 2. Section 1-3.3(E) and Table 1-3.3(E) are hereby amended to provide for the following language:

~~“Section E. Building Principal Structure Setbacks. Table 1-3.3(A) provides building setbacks for all zoning districts. conventional single-family lots as well as for multiple family residential and nonresidential sites.~~

~~In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way as in Table 1-3.3(E).~~

~~The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar Comprehensive Plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.~~

TABLE 1-3.3(E). ~~Additional Building~~ Principal Structure Setbacks from Centerline of Thoroughfares ~~Streets and Roads~~

Transportation Facility	Building Setback (in feet) from C/L
Arterial Roadways (150 feet ROW)	100
Highway 1	
Malabar Road	
Babcock Street	
	Building Setback (in feet) from C/L
Major Collector Streets (100 feet ROW)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek Boulevard	
Jordan boulevard	
	Building Setback (in feet) from C/L
Minor Collector Streets (70 ft) (80 feet ROW)	75
Atz Road, Hall Road, Old Mission Road	
Benjamin Road, Reese Road	
	Building Setback (in feet) from C/L
Local Streets (50 – 60-foot ROW)	65

“

Section 3. Codification.

It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that Article III, District Provisions, Section 1-3.3(E) and Table 1-3.3(E) be codified into the next supplement update of the Land Development Code of the Town of Malabar, Florida.

Section 4. Severability.

In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 5. Conflicts.

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

Section 6. Effective Date.

This ordinance shall take effect immediately upon its adoption.

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

Council Member District 1 Grant Ball	_____
Council Member District 2 Brian Vail	_____
Council Member District 3 Steve Rivet	_____
Council Member District 4 Dick Korn	_____
Council Member District 5 Danny White	_____

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Town of Malabar Town Council on March 4, 2019.

TOWN OF MALABAR

By:

Mayor Patrick T. Reilly, Council Chair

1st Reading: 2/4/19 4 to 1 (CM Korn)

2nd Reading: 3/4/19

(seal)

ATTEST:

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

Approved as to Legal Sufficiency:

Karl W. Bohne, Jr., Town Attorney

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 5
Meeting Date: March 04, 2019

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

SUBJECT: Second Reading of Ord 2019-04 Amending Article V

BACKGROUND/HISTORY:

Attached is an ordinance that amends Article V General Provisions to refer the reader to Article III, District Provisions, Tables 1-3.3(A) and (E)

This removes the conflict with the Comprehensive Plan.

This was legally advertised in Florida Today on February 14, 2019.

ATTACHMENTS:

Ordinance 2019-04

ACTION OPTIONS:

Adopt Ord 2019-04

ORDINANCE 2019-04

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE V, GENERAL PROVISIONS, SECTION 1-5.10 OF THE LAND DEVELOPMENT CODE, PROVIDING FOR CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES; PROVIDING FOR REFERENCE TO ARTICLE III DISTRICT PROVISIONS TABLE 1-3.3(A) AND TABLE 1-3.3(E) IN THE LAND DEVELOPMENT CODE; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Malabar adopted size and dimension regulations for all zoning classifications for principal structures based on the guidelines in the Comprehensive Plan; and

WHEREAS, The Town Council has determined there is a need to clarify language in the body of Section 1-5.10 of Article V, General Provisions, to refer to Article III, District Provisions Table 1-3.3 (A) and Table 1-3.3(E) for the setbacks for principal structures; and

WHEREAS, The Town Council approved these recommendations from the Planning and Zoning at their meeting on August 6, 2012.

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

Section 1. Findings. The above statements are correct.

Section 2. Section 1-5.10 of Article V are hereby amended to provide for the following language:

~~"Section 1-5.10. Principal Structure Building Setbacks. from the center line of rights-of-way~~

~~For the purpose of promoting health, safety, and general welfare of the community, and to lessen congestion in the streets; to secure safety from fire, panic, storm, hurricane or other causes; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to provide adequate facilities for transportation, parking, water and sewerage; and to conserve the value of buildings and encourage the most appropriate use of land, all properties within the Town limits shall maintain these minimum building setback lines as measured from the center line of the road.~~

In determining the setback requirement for any principal structures proposed to be located, the setback requirements in this section shall be construed as a minimum setback and if a greater setback is required under any of the zoning districts then such greater setback requirement shall be in compliance with Article III, District Provisions, Table 1-3.3(A) or Table 1-3.3(E), whichever is more restrictive.

~~In the event of the recording of any proposed street or road in the office of the Town Clerk, or in the event of the designation or establishment by the Town Council of any proposed public street or road, the same shall thereupon immediately be used as the reference point for the purpose of determining setbacks for new construction under the terms of this ordinance. This provision shall not prevent the reconstruction of a fully or partially damaged or destroyed legally nonconforming structure so long as the rebuilt structure is consistent with the Building Code. The measurement shall be from the center line of the road. "~~

Section 3. Codification.

It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that Article V, General Provisions, Section 1-5.10 be codified into the next supplement update of the Land Development Code of the Town of Malabar, Florida.

Section 4. Severability.

In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected, and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 5. Conflicts.

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

Section 6. Effective Date.

This ordinance shall take effect immediately upon its adoption.

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

- Council Member District 1 Grant Ball _____
- Council Member District 2 Brian Vail _____
- Council Member District 3 Steve Rivet _____
- Council Member District 4 Dick Korn _____
- Council Member District 5 Danny White _____

This Ordinance will be declared to be duly adopted seven days after the regular meeting of the Town of Malabar Town Council on March 4, 2019.

TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

1st Reading: 2/4/19 5 to 0
2nd Reading: 3/4/19

(seal)

ATTEST:

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

Approved as to Legal Sufficiency:

Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Meeting Date: March 04, 2019

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

SUBJECT: Adopt Resolution of FDOT regarding Fern Creek property

BACKGROUND/HISTORY:

The Town of Malabar acquired the 1.12-acre site located at the SW corner of Corey Road and Malabar Road, and known as Fern Creek Crossing, as part of the Florida Communities Trust Preservation 2000 Program administered by the Florida Department of Environmental Protection. The State purchased this land when the Town of Malabar committed to maintaining this property in its natural state as part of the State's goal of setting aside conservation lands.

The Florida Department of Transportation (FDOT) is now acquiring land to make necessary transportation improvements along the State Road known as Malabar Road. The priority projects are intersection improvements at Corey and Weber Roads. To accomplish this the FDOT needs to acquire adjacent land.

The transportation improvements to be provided by FDOT and their willingness to aid with the Town's proposed stormwater project in that area have been determined to have more human value than its current use of providing a passive conservation area.

This resolution is the form required by FDOT when transferring lands from one entity to them for the specific project. For this intersection improvement project this parcel is identified as Parcel 100.1. The Brevard County Property Appraiser's Office has identified it as 29-37-02-00-72 and E-911 has assigned the address of 1585 Malabar Road.

It is staff's recommendation for Council to approve/adopt this resolution.

ATTACHMENTS:

Resolution transferring ownership to FDOT of Parcel 100.1 from the Town of Malabar to achieve success in future intersection and stormwater improvements.

ACTION OPTIONS:

Approve FDOT Resolution

03-BSD06-09/01

June 30, 2017

This instrument prepared by

Marika Tremblay

Under the direction of

FREDRICK W. LOOSE, ATTORNEY

Department of Transportation

719 South Woodland Boulevard

DeLand, Florida 32720-6834

PARCEL NO. 100.1

SECTION 70180

F.P. NO. 413761 1

STATE ROAD 514

COUNTY BREVARD

RESOLUTION

ON MOTION of Council Member _____, seconded by Council Member _____, the following Resolution was adopted:

WHEREAS, the State of Florida Department of Transportation proposes to construct or improve State Road No. 514, Section No. 70180, F.P. No. 413761 1, in Brevard County, Florida: and

WHEREAS, it is necessary that certain lands now owned by Town of Malabar, Florida, be acquired by the State of Florida Department of Transportation: and

WHEREAS, said property is not needed for Town purposes: and

WHEREAS, the State of Florida Department of Transportation has made application to said Town to execute and deliver to the State of Florida Department of Transportation a deed, or deeds, in favor of the State of Florida Department of Transportation, conveying all rights, title and interest that said Town has in and to said lands required for transportation purposes and said request having been duly considered.

NOW THEREFORE, BE IT RESOLVED by the Town Council of Town of Malabar, Florida, that the application of the State of Florida Department of Transportation for a deed, or deeds, is for transportation purposes which are in the public or community interest and for public welfare and the land needed for transportation purposes is not needed for Town purposes; that a deed, or deeds, in favor of the State of Florida Department of Transportation conveying all right, title and interest of Town of Malabar, Florida, in and to said lands should be drawn and executed by _____, on behalf of this Town Council.

PARCEL NO. 100.1
SECTION 70180
F.P. NO. 413761 1
PAGE 2

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at 719 South Woodland Blvd., DeLand, Florida, 32720-6834.

STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that the foregoing is a true copy of a Resolution adopted by the Town Council of Town of Malabar, Florida, at a meeting held on the _____ day of _____, _____.

Clerk, Town Council
Town of Malabar, Florida