

TOWN OF MALABAR

COUNCIL WORKSHOP MEETING

MONDAY, JANUARY 30, 2017

7:30 P.M.

MALABAR TOWN HALL

2725 MALABAR ROAD

MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE
- B. ROLL CALL
- C. WORKSHOP ACTION:
 - 1. Brief Overview of the proposed changes to the Future Land Use Map
 - 2. Residential/Limited Commercial (R/LC)
 - 3. Discuss Date for Next Workshop
- D. ADJOURNMENT

WORKSHOPS ARE INTENDED AS "SHIRTSLEEVE" MEETINGS WHERE COUNCIL DISCUSSES TOPICS INFORMALLY IN ORDER TO ACHIEVE A BETTER UNDERSTANDING.

WORKSHOPS ARE NOT FORMAL LEGISLATIVE MEETINGS; THEREFORE, NO OFFICIAL ACTION CAN BE TAKEN. IN ORDER TO ALLOW SOME UNDERSTANDING OF THE STATUS OF DISCUSSION ITEMS, UNOFFICIAL "STRAW VOTES" MAY BE TAKEN TO DETERMINE THE SENSE OF COUNCIL

If any individual decides to appeal any decision made by this Council with respect to any matter considered at this meeting, a verbatim transcript may be required and the individual may need to insure that a verbatim transcript of the proceeding is made (FS 286.0105). The Town does not provide this service.

In compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town Clerk at 727-7764 at least 48 hours in advance of this meeting.

Memorandum

To: Town Council, Planning and Zoning Board, Town Administrator and Town Staff

Date: March 8, 2016

From: Karl W. Bohne, Jr.

Re: Comprehensive Plan and Zoning Consistency

In the past I have advised the town council, the planning and zoning board and staff that the comprehensive land use plan (Future Land Use Map) and zoning must be consistent. That statement still holds true. I gave this advice to simplify matters so staff can make sure that when development permit request comes in the first thing that must be looked at is consistency. FS 163.3161 (6) provides: "It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act."

A Comprehensive Plan is one that meets the requirements of FS 163.3177 and 163.3178. The plan contains elements required by the statutes, and one of those elements is the Future Land Use Plan, which includes the future land use map (FLUM). I can best describe the future land use map as designating current land uses and how they will be developed in the future.

When Comprehensive Plans were first adopted it was not uncommon for the future land use designation of a parcel to be inconsistent with the zoning and therefore considered non-conforming. That inconsistency is allowed to remain so long as no development permits are sought for the parcel. If so, then the zoning and the FLUM need to be consistent and a rezoning is generally needed.¹ A Development permit "includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land."² See FS 163.3164 (16). So long as no

¹ Sometimes an amendment to the FLUM can be sought; however, that can be a more burdensome and expensive way to go and one must take into consideration that you do not create compatibility issues. "Compatibility" is defined as means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. See FS 163.3164 (9).

² **380.04 Definition of development.**—

(1) The term "development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

(2) The following activities or uses shall be taken for the purposes of this chapter to involve "development," as defined in this section:

(a) A reconstruction, alteration of the size, or material change in the external appearance of a structure on land.

Development Permit is applied for then the inconsistency created above should be allowed to remain and will be generally governed by the Town's rules concerning non-conformities under Section 1-11.1, et seq.

So when the Town is considering a development permit, one of the first things that need to be looked at is whether there is consistency between the Comprehensive Plan (FLUM for purposes herein) and Zoning. If not then that irregularity must be first address before and further action can take place.

If the Town tomorrow decides to change the FLUM for properties and the zoning and the FLUM are inconsistent then a non conformity is created and now development permit may not be issued until consistency is achieved. By creating this inconsistency with a FLUM amendment and not an accompanying rezoning the landowner's hands tend to get tied and further development of the property can not be done until consistency. That is why I advise the two must be consistent from a policy perspective. So when the Town

(b) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.

(c) Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any "coastal construction" as defined in s. 161.021.

(d) Commencement of drilling, except to obtain soil samples, mining, or excavation on a parcel of land.

(e) Demolition of a structure.

(f) Clearing of land as an adjunct of construction.

(g) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(a) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

(b) Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners.

(c) Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d) The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

(f) A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(g) A change in the ownership or form of ownership of any parcel or structure.

(h) The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

(4) "Development," as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of subsection (1).

initiates a FLUM change I like to see a rezoning and FLUM change to occur at the same time usually at the cost of the Town, if it is Town initiated. I would highly recommend against a prospective FLUM or Zoning change if it creates an inconsistency.

What I do not think should occur is the following:

Assume the current FLUM and zoning are consistent. The owner initiates a re-zoning to a zone inconsistent with the FLUM. That can not be done. The rezoning request would be a development permit request and consistency must be achieved before the development permit can be issued. The same is true instead of wanting to rezone the owner wants to amend the FLUM for the property without rezoning. If the result is an inconsistency between the two, then this can not be allowed to occur and the inconsistency must be resolved.

12/7/2015 FLUM Presentation Notes

- Slide 1
 - Why are we doing this?
 - The P&Z Board has been working on this for about 5 years
 - Better utilize the land along Babcock St, Malabar Rd and US1
 - It's been 20 years since the last Land Use changes
 - A Town needs to grow

- Slide 2
 - These are the present Land Use Designations that are in the Town's Comprehensive Plan. They are also in the Town's Land Development codes, Article's I and II.

- Slide 3
 - These are references for a visual on Babcock St, Malabar Rd and along US1

- Slide 4
 - Map on Left, Present Land Use as shown in the Comprehensive Plan
 - Map on Right, Proposed Land Use from Planning and Zoning Board
 - General statement for all slides: All lines are along established property lines. No splitting of lots
 - The property along I-95 is all commercial
 - A feasibility study was done to extend Foundation Park Ave to the east side of Babcock St. The landowners could form a PUD and develop the area along I-95.

- Slide 5
 - Large parcels, good for OI land use near the hospitals
 - East of Weber along Malabar Rd, change from RR to OI
 - Added new Tom Echenberg park as Conservation

- Slide 6
 - EEL's bought the Medium Density land, now Conservation
 - South side of Malabar Rd from RR to R/LC

- Slide 7
 - NW corner of Corry and Malabar Rd from RR to R/LC
 - Added park on SW corner to Conservation
 - SE corner from RR to R/LC

- Slide 8
 - EEL's bought the Medium Density north of Malabar Rd.
 - Disc Park is now Conservation
 - Changed north side of Malabar Rd from CG to R/LC
 - Changed south side of Malabar Rd from RR to R/LC
 - Trailhead Park is now Open Space

- Slide 9
 - Better defined what parcels are R/LC along Malabar Rd
 - West side of Railroad tracks is now a subdivision south of Gladder Rd, changed to RR
 - South side of Malabar Rd from OI to R/LC

- Slide 10
 - More CG at Malabar Rd and the railroad tracks

- Slide 11
 - West side of Railroad tracks is now a subdivision south of Gladder Rd, changed to RR
 - Changed the small parcel of CG (old Hotel California site) to R/LC to better align with the neighborhood

- Slide 12
 - No changes

- Slide 13
 - No changes

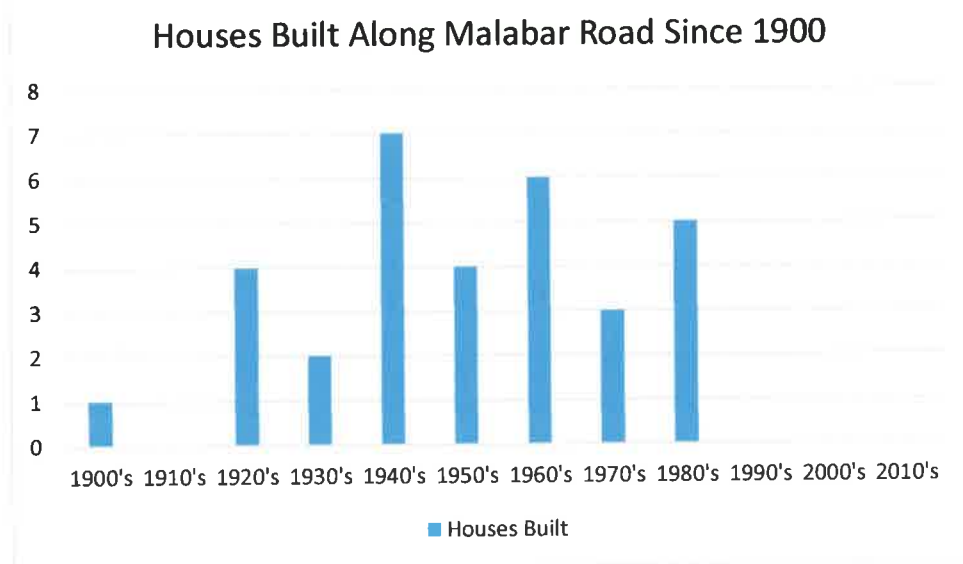
- Slide 14
 - No changes

Houses Built Along Malabar Road Since 1900

I researched all of the houses along Malabar Road as to when they were built. I did not include the house that burnt down across the street from the fire station that was rebuilt.

The house located at 2165 Malabar Road was the last house built along Malabar Road in 1983. It is across the street from the new church that was built, just west of Marie street on the north side of Malabar Road.

The following chart is a summary of my research.



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