

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, FEBRUARY 06, 2017
7:30 PM
2725 MALABAR ROAD, MALABAR, FLORIDA**

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
 - B. ROLL CALL**
 - C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:**
 - D. APPROVAL OF THE MINUTES:**
 - 1. Regular Town Council Meeting Minutes 1/23/17**
 - Town Council Workshop Mtg Minutes 1/30/17**
 - Exhibit: Agenda Report No. 1**
 - Recommendation: Request Approval**
 - E. BCSO REPORT:**
 - F. ATTORNEY REPORT: Social Media**
 - G. PROCLAMATION DESIGNATING MARCH 2017 AS IRISH AMERICAN HERITAGE MONTH**
 - H. BOARD/COMMITTEE REPORTS:**
 - I. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF**
 - J. 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) Three (3) Minute Limit per Speaker.
 - K. PUBLIC HEARINGS/SPECIAL ORDERS: 0**
 - L. UNFINISHED BUSINESS/GENERAL ORDERS**
 - ORDINANCES FOR FIRST READING: 0**
 - RESOLUTIONS: 0**
- MISCELLANEOUS:**
- 2. Cancel 2nd RTCM in February due to Presidents Day**
 - Exhibit: Agenda Report No. 2**
 - Recommendation: Request Approval**
 - 3. Appoint Three Member Audit Selection Committee**
 - Exhibit: Agenda Report No. 3**
 - Recommendation: Request Approval**
 - 4. Approve a modification to the Employee Manual related to lunch period of Town Hall staff.**
 - Exhibit: Agenda Report No. 4**
 - Recommendation: Request Approval**
 - 5. Action of Request to Participate in St. Patrick's Day Parade**
 - Exhibit: Agenda Report No. 5**
 - Recommendation: Request Approval**
 - 6. Approve an ILA with the County to use 3rd party Vendor as it relates to Homestead**
 - Exhibit: Agenda Report No. 6**
 - Recommendation: Request Approval**

7. Approve Contract between Town and the Malabar Community Association

Exhibit: Agenda Report No. 7

Recommendation: Request Approval

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:

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

Q. ADJOURNMENT:

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure 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: February 6, 2016

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

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

Attached are the summary minutes for the following meetings:

- Regular Town Council Meeting – 1/23/2017 .
- Town Council Workshop Meeting – 1/30/2017

It was determined during the last year that the minutes should be a brief summary of what occurred in the meeting. For specific details, audio of the meetings are available.

ATTACHMENTS:

- Regular Town Council Meeting – 1/23/2017
- Town Council Workshop Meeting – 1/30/2017

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
January 23, 2017 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 Pat Reilly called the meeting to order at 7:30 pm. CM Rivet led the prayer and pledge.

B. ROLL CALL:

CHAIR:	MAYOR PATRICK T. REILLY
VICE CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	LAURA MAHONEY
	DICK KORN
	RICHARD KOHLER
TOWN ADMINISTRATOR:	DOUGLAS HOYT
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the record, Fire Chief Leonard Thomassen was also in attendance.

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

D. APPROVAL OF THE MINUTES:

1. Regular Town Council Meeting Minutes 1/09/17

Exhibit: Agenda Report No. 1

Recommendation: Request Approval

MOTION: CM Ball / CM Kohler to approve RTCM minutes of 1/09/17.

CM Mahoney said she did not say that fire chief should not get any severance. Clerk will check audio.

Vote: All Ayes.

E. BCSO REPORT: Deputy reported on Dec 2016. BCSO responded to 339 calls for service in Malabar. They are showing 20 traffic crashes in Dec on report. BCSO tech support is reviewing to clarify stats. Council thanked Deputy.

F. CERTIFICATE OF APPRECIATION: Good Citizen Recognition to Ronald & Sharon Johnson
PROCLAMATION JAN 22-28, 2017 SCHOOL CHOICE WEEK

G. ATTORNEY REPORT: Atty spoke of the severance provision in the Fire Chief contract approved by Council and said he had discovered a conflict in F.S. 215 which he found after the meeting. Terminating the existence of Fire Dept would effectively terminate the employment of the Fire Chief. That severance clause cannot exceed 20 weeks of pay. His recommendation is that the contract be renegotiated. CM Rivet asked if they could reword it to read that it would convert to a consulting contract. Atty said they need to change the language to state a maximum of 20 weeks of pay. TA said perhaps the labor attorney should review and weigh in. Council approved the contract by 3 to 2 vote. Based on the evidence presented at that meeting It is extremely unlikely Council would make this decision. TA urged them talking to labor attorney. Attorney Bohne said as it is written, it is not enforceable.

STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF

Administrator: TA on accidents on Malabar Road – FD responded to 48 calls on Malabar Road up from 24.

Clerk – nothing

Fire Chief - nothing

- H. **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) Three (3) Minute Limit per Speaker.

Sarah Marino, 1720 Benjamin, read statement into record about increased stormwater caused from construction and fill on south side of Benjamin Road. There is a greater volume of water and it is not flowing like it used to. Construction on south side of Benjamin that is causing it not to flow. Would like TA to speak to G-V TA and see what has been done.

Jose Marino, 1720 Benjamin Road, said he had asked the TA about it 1.5 years ago and still no action. CM Rivet spoke to this and would like to hold a presentation for the public. TA suggested they do it by given areas. CM Mahoney said she asked for graphs to be put on website but Clerk said she could not put them up.

(send email I sent to Laura to all of Council)

CM Mahoney spoke with another neighbor on Benjamin that grazes animals and he said there is more and more water standing and swales not being covered and water is not flowing.

- I. **PUBLIC HEARINGS/SPECIAL ORDERS: 1**
Moratorium Ordinance Related to Medical Marijuana (Ord 2017-01)
 Public Hearing

2. AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE SUBMITTAL, PROCESSING, AND ISSUANCE OF LOCAL BUSINESS TAX RECEIPTS OR LAND USE PERMITS, DEVELOPMENT ORDERS, MODIFICATIONS OR APPROVALS FOR MARIJUANA DISPENSING ORGANIZATIONS OR MEDICAL MARIJUANA TREATMENT CENTERS AND RELATED FACILITIES AND ESTABLISHMENTS FOR A PERIOD SPECIFIED; PROVIDING FOR LEGISLATIVE FINDINGS, THE GEOGRAPHIC AREA COVERED; REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2
Recommendation: Approve Ord 2017-01

Chair directed Clerk to read by title only.

Public Hearing opened.

Mr. Ron Johnson, Homestead Lane, asked if this was in conflict with State law. No it just gives us time to create a zoning ordinance.

PH closed.

MOTION: CM Rivet / CM Kohler to adopt Ord 2017-01. Discussion:

CM Rivet heard on NPR that there is at least one maybe up to three vendors looking at the Space Coast. Attorney said everyone is still waiting for DOH to put together the rules. Attorney said there are about 30 cities that have done moratoriums.

ROLL CALL VOTE: 1)CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Excused; CM Kohler, Aye. Carried 4 to 0.

- J. **UNFINISHED BUSINESS/GENERAL ORDERS**
ORDINANCES FOR FIRST READING: 0
RESOLUTIONS: 0
MISCELLANEOUS: 3

3. Detailed Progress Report on SpringFest 2017 from Events Committee Chair

Exhibit: Agenda Report No. 3

Recommendation: Action

Events Chair read her report. Attached.

Liz Ritter came to podium and said they have formed the Malabar Community Association and she then read the mission statement.

The Malabar Community Association promotes community engagement through events and activities that enhance and exemplify the spirit of the Town of Malabar.

The Malabar Community Association will work to foster community involvement and comradery among fellow residents who enjoy social, recreational and educational activities using the town's abundant parks and community resources.

Teresa said their association named her the Treasurer and she was looking to Council on what she could do as treasurer. CM Mahoney looked it up in the Charter that Debby is allowed to give up to 10K.

Attorney said they can organize this group and the Council can then hire them to run the event. That would be one way to do it. Give them \$6,500.00. TA said then we give them revenue then there will be no new revenue come in. CM Ball said we could write a contract to pay the town a certain percentage of the take. Would need to negotiate if we give \$6,500.00 we get \$7,200 in return.

Mayor asked how many volunteers are signed up to help. CM Mahoney said they have 8 people.

CM Rivet – technically in violation of the Charter having CM Mahoney run the Events Committee and sit on Council. Atty said he has spoken to this before – dual office holding.

Atty said they are trying to change the function of this. He has issued this opinion in writing and they need to move forward on this sooner rather than later.

Liz Ritter said we are not getting anywhere – referred to G-V: they have people on the Council and on the committee that will volunteer to do this. Malabar Community Association will be formed in the next day or two. Mayor said the solution is to not have Laura be the Chair. Teresa can be the liaison.

CM Ball said since we are going down this road, the powers to be on both sides need to start looking at what the contract should look like. Can it be done before the next council meeting. He needs to know the what the number are. He wants to see what the contract will look like – wants to see it ahead for time – not for profit. CM Ball asked the difference between non-profit and not for profit. There is a big difference between tax exempt and nonprofit.

4. R/LC and Land Use Maps – Set Workshop Dates

Exhibit: Agenda Report No. 4

Recommendation: Action

Workshop set for 7:30 for next Monday. Chair said he will go through the slides at the beginning and see if there is support for the overview and the reasoning behind why P&Z came up with this. He recommends first going over the R/LC definition first. Since the recent Comp Plan now allows R/LC along Malabar Road and Babcock Street the P&Z Board is proposing amended definitions. Jan 30 and then at that meeting they will schedule the next meeting.

5. Discuss Possible Purchase of Billie/Durak Property 2715 Malabar**Exhibit:** Agenda Report No. 5**Recommendation:** Action

Liz Ritter – had question on this – if we can't make money and can't afford ... why is this on agenda to purchase. CM Vail supported this and CM Ball asked for this to be on for discussion. CM Kohler asked if TA had update on the possible co-location on EELs property. TA gave update on the last meeting – proposed together or separate maybe with a breezeway. Will get back together at end of Feb. Put city hall closer to center of residents homes.

CM Ball asked for this – not that he is for buying this. He is in favor to have TH closer to center of the town. The Post Office moved from by railroad to center of town; the Fire Dept also moved from railroad to more central location. This would still be by the railroad and it is not a good place; needs to be more central.

CM Rivet is in complete agreement to have Town Hall located with the Fire Dept. Does not support purchase of the property next door for Town Hall or for any reason.

Chair said the Brevard County Property Appraiser's website will give list the market value. He suggested that in support of the purchase of this property – it could be a town investment to sell when we are ready, but we are not into land speculation.

Consensus that there is no interest to purchase.

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

K. DISCUSSION/POSSIBLE ACTION:**6. Discuss Possible Sale or Lease of Huggins Park Land****Exhibit:** Agenda Report No. 5**Recommendation:** Discussion and Direction

CM Mahoney asked what the two ideas that had been mentioned. TA said the soccer field could be moved temporarily while soccer field rehab. Also a resident is interested in buying it. Another group of residents are interested in leasing it. County is looking at the reverter clause so we could sell it with clear title.

CM Rivet said we have reduced out reserves and he could support selling it if we would put 100% of the net profits back into reserves.

CM Ball asked if the recreational formula of "x" population per five acres included EELs land. Clerk said no the formula is only for recreational land that is owned or managed by Malabar.

Who would be the listing agent? TA said ask Atty how to proceed with that. His idea is assuming we get the free and clear title would be a sealed bid.

Chair said TA should give Council those options in writing; sell it or lease it.

L. PUBLIC COMMENTS: General Items (Speaker Card Required)**N. REPORTS – MAYOR AND COUNCIL MEMBERS**

Mayor – nothing

- 1) CM Ball – move forward with getting SpringFest lined up
- 2) CM Mahoney – referred to her report. She does think the idea to use Huggins Park for interim period while soccer field rehabs.
- 3) CM Rivet – there is a least one CM asking town employees to get things done. It is the most efficient and respectful way to follow chain of command which is through

Administrator and Clerk. That is an issue. Anyone else have comments. CM Kohler said to follow the chain of command. TA and Clerk have been cut out of chain of command.

Rivet continued - Because of Sunshine law we are limiting the use of social media. We are prohibited from using social media as a tool to communicate with other council members. He asked if they should all refrain from discussion of town business on social networks. If one council member gets out there first and puts their own spin on things and the other Council members don't want to appear to using the social site to exchange communications. Free to post on their own websites. He would not like to see any of them face a possible sunshine violation.

CM Mahoney said you said you should encourage people to engage. CM Ball said they need the Atty to go over it again. CM Rivet is concerned that one of them may inadvertently violate the sunshine.

- 4) CM Korn – excused
- 5) CM Kohler – re: Billie property: he said that the agenda package indicated the Town has discussed this with the Billie family for ten years. He said Town should send a letter to family thanking them for offering it first to us so they can move forward. Clerk said she would prepare letter for Mayor to sign.

Staff items for future agendas:

- TA said if so we should contact the immediate neighbors to Huggins Park to see if using it temporarily for soccer would create a problem.
- Social Media Refresher by Atty Bohne
- TA to provide written options for disposition or use of Huggins Park
- Provide Rev/Exp sheets from past SpringFest and Volunteer list and vendor commitment dates. This isn't supposed to be a competition – CM Ball was just trying to encourage more residents to participate.
- Stature, Code and Charter info related to bid requirements/thresholds
- Flood maps and codes for Benjamin current and historical.

O. ANNOUNCEMENTS:

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

P. ADJOURNMENT:

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

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 2/6/2017

DETAILED PROGRESS REPORT ON SPRINGFEST 2017 prepared by Laura Mahoney

The first Springfest meeting for 2016 met around this time last year.

For 2017 we are far ahead of previous committees. Flyers will be completed at the January 19th meeting! I'll bring them to council Monday after final review tonight.

In previous years put forth by Cindy Kelly, the packet was released mid-late January and vendors were on a first come first serve basis. So it would be quite unlikely to have these answers this soon but we already had most of these posted in our monthly minutes before becoming an official committee by resolution.

What bands selected: Have canvased a few particularly from Malabar Mo's and Palm Bay Friday Fest.

What food vendors have been selected: Need Flyers first but always favor Malabar community

Hours and date of event: March 25th 10am-6pm

Who is doing the car show: Bad Boys has given a verbal agreement.

Will there be an MC: Volunteer community people and committee members

The community has been well prepped in advance as all the veterans events were canvased in November. The festivals and markets have been canvassed. The date has been well published in advance. I'll include map to show flow this year.

Subject: Duplex Outlet (communication between Hans & Doug)

The cost to install a Duplex Outlet with two 20 amp 120 volt weather resistant plug ins is \$189.00 as quoted by Commercial Electric. The location would be adjacent to the main breaker panel at the north end of the Malabar Community Park.

(This is for possible borrowed stage to move main band near parking lot.)

ARTICLE IV. ORDINANCE ADOPTION PROCEDURE*

Secs. 2-76—2-100. Reserved.

ARTICLE V. PURCHASING†

Sec. 2-101. Competitive bids.

No contract for any purpose, when the stipulated consideration thereunder to be paid by the town shall exceed ten thousand dollars (\$10,000.00), shall be let by the town council or under its authority without first soliciting bids from at least three (3) reputable bidders, or advertising a request for bids online calling for bids upon the work to be done, or upon the goods, supplies or materials to be furnished and in each case such contract shall be awarded, if at all, to the lowest and best bidder; provided, that nothing in this section shall be held to apply to contracts for personal services. In cases of articles or goods manufactured exclusively by one maker, the council may declare by resolution, if such is the case, that no other or similar articles or goods will properly serve the purpose intended, whereupon such articles or goods may be purchased from the sole maker thereof direct or from the sole agent of such sole maker authorized to sell in the territory in which the town lies.

The town administrator is authorized to piggy back contracts for any purpose where the stipulated consideration thereunder to be paid by the town exceeds two thousand dollars (\$2,000.00) awarded by any other governmental entity so long as the bidding process utilized by the other governmental entity in awarding such contract is consistent with the competitive bid procedures outlined in this section.

(Ord. No. 18-68, § 1, 5-27-68; Ord. No. 88-25, § 1, 6-7-88; Ord. No. 04-03, § 2, 4-5-04; Ord. No. 03-06, § 1, 9-8-03; Ord. No. 09-23, § 1, 5-4-09)

Secs. 2-102—2-125. Reserved.

ARTICLE VI. EMPLOYEE BENEFITS

DIVISION 1. GENERALLY

Secs. 2-126—2-150. Reserved.

***Charter reference**—Ordinances, § 2.16.

Cross reference—Procedures for adopting, supplementing or amending the Land Development Code, § 1-12.5, Land Development Code, Vol. II.

State law reference—Procedure for adoption of ordinances, F.S. § 166.041.

†**State law references**—Consultants Competitive Negotiations Act, F.S. § 287.055; insurance, competitive bids, F.S. § 112.08.

MALABAR COUNCIL WORKSHOP MEETING
January 30, 2017 7:30 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 7:30 pm by Chair Mayor Reilly. P&P were led by Mayor.

B. COUNCIL/COMMITTEE:

COUNCIL CHAIR:	MAYOR PATRICK T. REILLY
VICE-CHAIR:	STEVE RIVET
COUNCIL MEMBERS:	GRANT BALL
	LAURA MAHONEY
	DICK KORN, absent
	RICHARD KOHLER
ADMINISTRATOR	DOUG HOYT, excused
CLERK/TREASURER:	DEBBY FRANKLIN

C. WORKSHOP ACTION: POSSIBLE CHANGES TO FUTURE LAND USE MAP

Mayor said he will go through the slides. Mayor said CM Ball and Mahoney were at the P&Z Board meeting last Wednesday.

Mayor explained how the P&Z Board developed the proposed changes in the land use maps, starting along Babcock, then Malabar Road and finally Highway 1. He then explained since the Comp Plan now provides for R/LC along Malabar Road and Babcock it is important to have a good definition for R/LC. The idea is to use R/LC as a buffer between RR65 (which is either large lot single family home or agricultural).

When the P&Z Board did their review they determined that they did not want to continue with the current trend of drawing a line through a land use designation through one person's parcel. That is why some of the R/LC go a distance of 1320'. CM Rivet's concern is the possibility of having large lots developed as R/LC and adversely impacting the RR properties.

Chair said there are other limits that would prevent over development in R/LC. He then went over the current definition of R/LC in the Malabar Land Development Code and the proposed changes that would require a formula to be used with residential and limited commercial uses not exceeding one another by more than a factor on one.

Chair then asked for a straw poll if the Council is willing to consider changing some land use designations. Consensus was yes.

The Council agreed to meet again on the 4th Monday of February at 7:30pm. Chair asked each member to read the current language and the proposed language and be prepared to discuss it.

Chair Reilly, without objection, adjourned the meeting. This meeting adjourned at 9:00pm.

BY: _____
Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST:

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

Approved: 2/6/17

AGENDA # F

**TOWN OF MALABAR PUBLIC RECORDS AS THEY RELATE TO
SOCIAL MEDIA
by Attorney Karl Bohne RTCM 02/06/17**

PUBLIC RECORDS REQUIREMENTS

The obligation to produce public records attaches to the agency and the agency's employees and representatives, all of whom have an obligation under the Florida Public Records Law to produce public records in their possession. F.S. §119.07(1)(a) provides that "[e]very person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public record or the custodian's designee." As you know for many years I have stressed the importance of complying with the PR Law and also the importance of turning over to the clerk any and all PR a board member receives or produces.

Government elected officials desire to possess and disseminate the most up-to-date information to the public. Social networking sites are being embraced by some public officials and public agencies as a way communicate public business.

Florida's Public Records Law

Access to public records is guaranteed by Fla. Const. art. I, §24 and F.S. Ch. 119. Specifically, Fla. Const. art. I, §24 states:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

The constitutional protection afforded public records is further set forth in Florida's Public Records Law, F.S. Ch. 119. The purpose of Florida's Public Records Law is to memorialize that, unless a record is exempt, "[p]roviding access to public records is a duty of each agency."

Florida's Public Records Law applies to each "agency" of the state, which includes:

Any... municipal officer... acting on behalf of any public agency.

The obligation to produce public records attaches to the agency and the agency's employees and representatives, all of whom have an obligation under the Florida Public Records Law to produce public records in their possession. F.S. §119.07(1)(a) provides that "[e]very person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public record or the custodian's designee." The term "records custodian" under the Public Records Act means all agency personnel who have it within their power to release or communicate records. In order to have custody, a person must have supervision and control over the record or have legal responsibility for its care, keeping, or guardianship.

What Is a Public Record?

The term "public record" is broadly defined to include "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to

TOWN OF MALABAR PUBLIC RECORDS AS THEY RELATE TO AGENDA # F
SOCIAL MEDIA
by Attorney Karl Bohne RTCM 02/06/17

law or ordinance or in connection with the transaction of official business by any agency.” The Florida Supreme Court has upheld an expansive interpretation of “public records” to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge. While the determination of what constitutes a public record is a question of law, the determining factor of whether a document is a public record subject to disclosure is the nature of the record, not its physical location or form. A document that is used and made or received in connection with public business is a “public record.”

Public records made or received by an agency are subject to retention requirements established by the Division of Library and Information Services of the Department of the State that governs the destruction and disposition of records. F.S. §119.021 sets forth maintenance, preservation, and retention requirements for public records. It provides that public officials must “systematically dispose” of records no longer needed in compliance with the record retention disposal provisions contained in F.S. §257.36.12 The obligation to comply with the retention and disposal requirements applies irrespective of whether the public record is in a hard copy format or is electronically generated and maintained. Retention requirements for agency electronic records are governed by rules promulgated by the Division of Library and Information Services, and the retention periods within the rule are based upon the content, nature, and purpose of the record, and the corresponding legal, fiscal, administrative, and historical value.

The Public Records Law has also been extended to website blogs and message boards irrespective of whether the message is created on a publicly or privately owned computer when the record is in connection with official business of the agency. See AGO- 08-07 (finding that postings by a city council member on a private Internet website about official business would be subject to the requirements of the Public Records Law); *National Collegiate Athletic Ass’n v. Associated Press*, 18 So. 3d at 1207 (stating that the Public Records Law is not limited to paper documents, it applies to documents that exist only in digital form as well.) In the context of websites and blogs, the Florida attorney general has opined that when public officials of a public agency create a public document by posting comments about official agency business, the individual is responsible for ensuring that the information is maintained in accordance with the Public Records Law and the policies and retention schedule adopted by the agency. AGO- 08-07

In April 2009, the Florida attorney general responded to an inquiry from the City of Coral Springs regarding whether the municipality could create and use a Facebook page in compliance with Florida’s Sunshine and Public Records Laws. The Florida attorney general’s opinion suggests that a city has the authority to establish a Facebook page pursuant to its home rule authority for a valid public purpose, but stated that any information on the city’s Facebook pages made or received in connection with the transaction of official business by the city would be subject to Florida’s Public Records laws. AGO- 09-19. Florida’s attorney general stated that to the extent the information on the city’s Facebook account communicated information made or received in connection with the transaction of official business, such information would constitute a public record, and the city would be under an obligation to follow the public record retention schedules set forth in F.S. §257.26.28

It is without doubt that public business conducted through the use of social networks, email, text messaging and other forms of electronic technology creates a responsibility by the public official to

TOWN OF MALABAR PUBLIC RECORDS AS THEY RELATE TO AGENDA # F
SOCIAL MEDIA
by Attorney Karl Bohne RTCM 02/06/17

retain such records, whether they are on a public or private system, and to make sure that the custodian of the record is provided a copy.

If these social media postings are being made from a private computer and the content is used to **perpetuate, communicate, or formalize knowledge** then it is the obligation of such public official to make sure that such record is saved and turned over to the Town's custodian of records, The Town Clerk. This includes anything authored by the public official but also any replies to it or original messages received by a public official.

Consequences for Failure to Produce

A claim can be asserted under the Public Records Law against any person having custody of the public record who fails to produce it following a public records request. Claims may be civil actions, criminal prosecution, fines, public office suspension or removal.

Official
Proclamation
Town of Malabar,
Florida

Irish American Heritage Month

WHEREAS, by 1776 nearly 300,000 Irish nationals had emigrated to the American colonies and played a crucial role in America's War for Independence; and

WHEREAS, Irish Americans helped to fashion a system of government for our young Nation; and

WHEREAS, in 1943, The Sullivan brothers made the ultimate sacrifice for democracy and freedom in the world and later had the Destroyer USS Sullivan Commissioned in their memory, and

WHEREAS, eighteen Presidents have proudly proclaimed their Irish American heritage; and

WHEREAS, Irish born Commodore John Barry was recognized by the United States Congress in September of 2002 as the "First Flag Officer of the United States Navy"; and

WHEREAS, in 1872 Captain Oliver Perry achieved his major naval victory in the Battle of Lake Erie ; and

WHEREAS, the Irish first came to Spanish "La Florida" in the 1500s – first as missionaries and mercenary soldiers and then as planters, traders, businessmen, doctors and administrators; and

WHEREAS, three of the Spanish Governors of "La Florida" were actually Irish military officers; and

WHEREAS, Governors and Mayors of 37 states have or will designate March of this year as, "Irish American Heritage Month", and

WHEREAS, Andrew Jackson, whose family came from County Antrim, served as Florida's military governor following its acquisition by the United States, and

WHEREAS, Irish Americans, since America's inception, have provided and continue to provide leadership and service to this nation's political, business and religious establishments; and

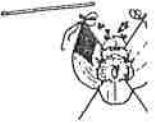
WHEREAS, it is fitting and proper to celebrate the rich cultural heritage and the many valuable contributions of the Irish Americans.

NOW, THEREFORE, be it resolved, by the Town Council of the Town of Malabar, that the month of March is proclaimed as "IRISH AMERICAN HERITAGE MONTH".





ANCIENT ORDER
OF
HIBERNIANS
IN AMERICA



Edward P. Reilly
Past President Brevard County, FL

701 W. Central Blvd.
Melbourne, FL 32901

Res: 321/723-126
Division

TARAHILLAOH@AOL.COM



January 2017

Mayor, City of Malabar

Your Honor,

Once again, the Florida's Irish American community will be celebrating its Irish heritage during the month of March. Ever since the military governorship of Irish American Andrew Jackson, Irish Americans in Florida have provided leadership and service to their state, counties, and local communities. Irish Floridians can look back with pride on the legacy of their Irish forebears, who have contributed significantly to the education, business, sports, literature, science, engineering, medicine, science and the arts. Today, we continue to recognize and honor the service of current State, County and Town/City Council leaders and the contributions of fellow Irish American Floridians.

In the past, March has been designated, "Irish American Heritage Month", throughout the United States to coincide with the celebration of St Patrick's Day on the 17TH of March. Across the State of Florida, the Ancient Order of Hibernians and other Irish American organizations will be conducting parades, celebrations and cultural events – including my own division in Melbourne.

The Florida Ancient Order of Hibernians respectfully request that your office issue a Proclamation designating March 2017 as, "Irish American Month", in recognition of the long history of Irish American contributions to the State of Florida. To assist you in this request, I have taken the liberty of providing a few, "WHERAS", for your consideration and possible use.

On behalf of the Ancient Order of Hibernians in America, I would like to thank you for your kind consideration of this request. Should you have any questions or need additional information, please do not hesitate to contact me.

In Friendship, Unity and Christian Charity,

Francis X Delaney

Francis X Delaney

President, Division 2, AOH

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Workshop Meeting Date: February 6, 2017

Prepared By: Debby Franklin, CMC, Town Clerk/Treasurer

SUBJECT: Cancel 2nd meeting in February

BACKGROUND/HISTORY:

Council has historically cancelled the 2nd meeting in February unless there was pressing Town business. There is no pressing Town business.

ATTACHMENTS:

Calendar showing Council Meeting Dates

ACTION OPTIONS:

Action

TOWN OF MALABAR

February 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6 RTCM 7:30PM	7	8 PZ MEETING 7:30PM CANCELLED	9 MALABAR EVENTS 6:30PM CANCELLED	10	11
12	13	14 T&G 6:00PM Valentine's Day	15 PARK & REC 6:00PM	16	17	18
19	20 TOWN HALL CLOSED Presidents' Day	21	22 PZ MEETING 7:30PM	23 MALABAR EVENTS 6:30PM CANCELLED	24	25
26	27 RTCM- WORKSHOP 7:30PM	28				

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Workshop Meeting Date: February 6, 2017

Prepared By: Debby Franklin, CMC, Town Clerk/Treasurer

SUBJECT: Appoint a three-member Audit Selection Committee

BACKGROUND/HISTORY:

The Town of Malabar has contracted with Withum Auditing firm to perform the annual outside audits. Florida Statute requires that after a certain number of years the agency must solicit for proposals known as RFP and follow the exact criteria stated in the statute.

We will be releasing the RFP shortly and as part of the process, Council must approve the appointment of an audit selection committee.

These members should be familiar with the outside audit process, its requirements and the criteria to be used in reviewing the submittals.

Once the proposals are submitted they meet to review, rank and score each submittal. The committee will then present their recommendation to Council who formally accepts the committee's recommendation.

ATTACHMENTS:

Invitations to sit on the committee and acceptance from
Phil Crews
Wayne Abare
Matt Stinnett

ACTION OPTIONS:

Staff requests Approval.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 4

Workshop Meeting Date: February 6, 2017

Prepared By: Debby Franklin, CMC, Town Clerk/Treasurer

SUBJECT: Approve a Modification to Employee Lunch Period

BACKGROUND/HISTORY:

Currently the Town Hall staff work from 8:30am to 4:30 pm Monday through Friday and are paid for eight hours each day. This requires employees to eat at their desk, or jump up to answer phones and persons at the counter.

Staff is asking for a 30 minutes' lunch period where employees could be free of work interruptions. Of course serving our community is our top priority so it would be phased in with plenty of advanced notice. For those person who can only come by during their lunch hours, special provisions would be made on a case by case basis.

We proposed implementation of the new lunch period April 1, 2017.

ATTACHMENTS:

Marked up page dealing with lunch periods.

ACTION OPTIONS:

Staff requests Approval.

This is current language, line through is proposed change to current language; underscored is proposed new language

SECTION 3

WORKWEEK & HOURS OF WORK

1. WORK-WEEK

The basic workweek for all full-time, regular employees is 40 hours per week. The Town Administrator may approve deviations from the basic workweek for certain departments or individual positions as in departments covered by the public safety exceptions of the Fair Labor Standards Act. Daily hours of work and workdays may vary according to the service requirements of the department. Generally speaking, most employees will work five, eight-hour days per week.

2. HOURS OF WORK

A. The pay period shall start at 12:00 a.m. Wednesday and end at 12:00 midnight Tuesday, 14 days later.

B. Regarding nonexempt employees that document their start and stop times by means of a time clock, no one is permitted to punch a time card for anyone else this may be grounds for dismissal. Employees must sign their time cards for validation on the last scheduled day of each pay period. If an employee does not punch in or out, the employee must make sure to take the time card to the immediate supervisor either that day or the next morning. Failure to do so may result in disciplinary action in accordance with Section 9 of this manual.

C. All employees are required to be present on their assigned jobs for the total hours in the workweek unless absence from duty is authorized in advance by the appropriate authority in accordance with these personnel policies. All absences shall be properly recorded and charged. Town employees shall work forty (40) hours a week except where other provisions are specifically approved in advance by the proper authority. Normal workday for Public Works shall be from 7:30a.m. to 4:00p.m. Monday through Friday, unless otherwise scheduled. Lunch times may be scheduled at the discretion of the Department Head, shall be unpaid, and are a time free from work interruption.

Normal workday for Town Hall administrative exempt and nonexempt employees shall be from 8:30 a.m. to ~~4:30~~ 5:00 p.m. Monday through Friday, unless otherwise scheduled. shall be unpaid, and are a time free from work interruption.

Hours shall total 40 using either vacation or sick is regular work hours are under 40. There is no unpaid leave other than as stated for FMLA.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 5

Workshop Meeting Date: February 6, 2017

Prepared By: Debby Franklin, CMC, Town Clerk/Treasurer

SUBJECT: Request to Participate in the St. Patrick's Day Parade.

BACKGROUND/HISTORY:

Council was invited to to participate in the annual St. Patrick's Day parade on Friday March, 17, 2017.

ATTACHMENTS:

ACTION OPTIONS:

Action

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Workshop Meeting Date: February 6, 2017

Prepared By: Debby Franklin, CMC, Town Clerk/Treasurer

SUBJECT: Approve an ILA with the County to use a 3rd party Vendor as it relates to Homestead

BACKGROUND/HISTORY:

The Town Administrator was sent a packet of information regarding this and asking us to consider signing on to a inter local agreement to provide for outside 3rd party vendor to research Homestead Exemptions.

ATTACHMENTS:

Information from Breavard County

ACTION OPTIONS:

Staff requests Action.



Town of Malabar

2725 Malabar Road
Malabar, FL 32950
321.727.7764 (Office) 321.722.2234 (Fax)
www.townofmalabar.org

Feb. 3rd, 2017

Honorable Mayor Reilly, Council Members

Following please find a group of documents requesting that Malabar and other municipalities enter into an interlocal agreement to allow a third party perform an audit of the taxpayers in Brevard County claiming Homestead Exemptions. According to the County's estimate there are between 1,500 and 3,000 fraudulent filings. At \$25,000.00 per exemption this loss figure ranges from \$37 million and \$75 million dollars. Assuming this is correct, the recovery of the related tax would be a significant revenue increase to the County and possibility to Malabar and other Municipalities.

Please list any questions you may have and we will contact Mr. Zonka for answers.

Doug

Debby Franklin

From: Milo Zonka <milo.zonka@bcpao.us>
Sent: Wednesday, February 01, 2017 3:32 PM
To: Douglas C. Hoyt; Debby Franklin
Subject: Brevard Property Appraiser Homestead Audit program - Action requested
Attachments: Brevard Homestead Audit contract-for info only.pdf; BCPAO Memo to Taxing Authorities re Homestead Exemption Audit background.pdf; Brevard Homestead Audit-Taxing Authority Agreement-action item.docx

Importance: High

Mr. Hoyt,

The Brevard County Property Appraiser's office is working on an initiative to perform an audit on our entire county tax roll to ensure that all recipients of homestead exemptions are valid. To have a homestead exemption on real property is a valuable benefit to a taxpayer, the result of which is that we do have a very small percentage of cases where there is fraud, either accidental or intentional.

We have an internal ongoing effort using investigators on our staff to identify and address this fraud, but due to the volume of exemptions in Brevard (over 150,000), we are generally limited to being reactive to cases that present themselves, either through neighbor complaints, returned mail, listings for rent, etc.

A relatively recent effort that other property appraisers are using is to contract with a third-party to do a mass 'big-data' exercise to quickly help identify potential cases of fraud using resources we could not ever be able to scale up to. The cases a third party would identify will still be reviewed and vetted by Property Appraiser staff, but these data mining companies do the heavy lifting to find the 1-2% of fraudulent situations among the 150,000 possibilities.

We have elected to go that route in working with the Brevard Tax Collector's office. We are utilizing a recent procurement by Duval County to hire Tax Management Associates (TMA), a leader in this field of large scale tax roll audits and the only responsive company in recent Florida RFPs. Their current customers include Sarasota County and Pinellas County. TMA is compensated for their work on a contingency basis only. When TMA identifies a fraudulent case, our investigative staff proofs the case and a lien filed and then collected. When the lien is paid, by TMA's agreement with the Property Appraiser and Tax Collector, they would receive 28% of the amount collected. We look at these situations to largely be ones that we would not be able to identify using currently or foreseeable available resources, so there is no quantifiable present or future negative financial impact to taxing authorities. To the contrary, it is a positive financial impact. Our current limited investigative effort results in approximately \$1 million in liens filed annually, covering only a small portion of the tax roll. We anticipate that one-time returns would be a significant multiple of that amount. Once complete, we anticipate repeating the effort (as a separate effort and agreement with your agency) approximately every five years.

To formally agree to participate in the audit, accept payment of collected funds, and payment of contingency fees to TMA, your governing body would have to agree to a three party interlocal agreement with the Brevard County Tax Collector and the Brevard County Property Appraiser, which I have attached.

I request that this be placed on an upcoming agenda for consideration by your governing body. Our staff is available to answer any questions you may have. In addition, please advise me once it is scheduled and whether you would like for us to attend the meeting to present and/or answer any questions that may arise.

If your governing body is in agreement, please complete (two copies) Page 5, execute the document and return to my attention at:

Brevard County Property Appraiser
Attn: Milo Zonka
400 South Street, 5th Floor
Titusville, FL 32780

Once received, both the Tax Collector and Property Appraiser will execute and a complete document will be returned to you.

Thank you for your service and for your attention to this matter.

Regards,
Milo

Attachments:

- BCPAO Background Memo
- Homestead Audit funding agreement – for local action
- Homestead Audit service contract (for info only)

Milo M. Zonka, CFP®, CGFO
Sr. Director, Administration & Finance
Brevard County Property Appraiser
400 South Street
Titusville, FL 32780

(321) 264-6700
milo.zonka@bcpao.us
www.bcpao.us



Dana Blickley, CFA
Brevard County Property Appraiser
P.O. Box 429
Titusville, FL 32781-0429
(321) 264-6700
www.BCPAO.us

MEMORANDUM

DATE: February 1, 2017

TO: Brevard County Taxing Authorities

FROM: Milo M. Zonka, Sr. Director, Finance & Administration **MMZ**

RE: Homestead Exemption Audit Agreement Background

The Homestead Property Tax Exemption, which is defined by the Florida Constitution, is a valuable benefit for permanent Florida residents. Coupled with the Save Our Homes cap, homeowners' savings on property taxes can climb into the thousands of dollars annually. Due to its money-saving benefits, the Homestead Property Tax Exemption is ripe for fraudulent or improper claims. A claim of improper homestead exemption shifts the burden of property tax payments to other property owners, and denies cities, school districts and other taxing authorities of needed revenue.

Florida Statute 196.011 (9) provides a process for filing liens for back taxes, 50% penalties, and 15% interest per annum for a period up to ten (10) years on parcels that receive undeserved homestead exemption. The amounts collected are returned to the taxing authorities by the Tax Collector. The Property Appraiser does not receive any portion of the funds collected under this statute.

The current method of detecting possible homestead exemption fraud relies primarily on reports from citizens and returned mail from the post office. The majority of potential fraud cases come in as tips and complaints from the general public. We also rely heavily on our returned, undeliverable mail as that is a red flag that a homestead exemption is no longer valid. Our homestead fraud department has a staff of four plus a manager. In 2016, this limited staff worked 988 cases generated by these reactive methods, resulting in 251 new liens totaling \$738,410 being filed and \$1,140,876 being collected and paid to the taxing authorities from previously filed liens. From 1999 through 2016, the investigative efforts of this staff have resulted in \$235 million in property value being returned to the tax roll countywide, with \$5.6 million in back payments, penalties and interest collected via property liens per applicable state statutes.

There are many cases of homestead fraud that go undetected using these methods. There are new technological developments in software and database mining that allow companies to run statistical, mass data analysis that we do not have the capabilities to run. This software enables us to uncover potential undeserved homestead exemptions by identifying property owners who receive benefits or have indications of residence in other jurisdictions nationwide.

We desire to contract with a vendor who offers a service that has helped to recover millions in tax dollars for other counties. They use their mass data analysis software to detect possible homestead exemption fraud paired with their highly trained investigative staff to verify information. They then return their findings to us so that we can validate that the homestead was improper and file liens against parcels receiving underserved benefits.

We believe that a more aggressive and comprehensive discovery approach of improper homestead will occur if we utilize a qualified third-party vendor versus increasing our staffing to more proactively work this higher volume. We also believe that taxing authorities will receive a greater financial gain using this approach despite the fact that a portion of the proceeds will be paid to the vendor (a maximum of 28% of collected liens). If no liens are filed and paid, the vendor will not be paid.

This proposal will require the Property Appraiser and Tax Collector to execute an Interlocal Agreement with each taxing authority in which the taxing authority agrees to have 28% of the proceeds of the lien collections paid to the vendor, plus the Tax Collector's authorized reimbursement rate.

The Property Appraiser and Tax Collector have selected Tax Management Associates (TMA) as the vendor for this project, using a piggyback on TMA's recent agreement with the Duval County Tax Collector and Property Appraiser. TMA was selected as a result of Duval County's RFP process and is an established market leader in this field. TMA currently contracts with Sarasota and Pinellas counties as well, and we have received strong references from each. We are confident that TMA will execute their portion of the project expeditiously and professionally.

We expect to achieve the necessary taxing authority agreement approvals by March/April 2017. TMA will begin their work immediately and the Property Appraiser's review and approval effort will begin thereafter. In order to maintain an orderly work flow, we will meter cases through the Property Appraiser's office to ensure that both the Property Appraiser and Tax Collector can handle the workflow without additional staffing. Based on the Property Appraiser's previous experience, it is anticipated that taxing authorities will begin to see lien payments in 2017 that will continue into 2018 and beyond as liens are paid off.

The proposal creates a funding mechanism to allow us to review the validity of all residency-based property tax exemptions and should serve to decrease the number of exemptions that are improperly claimed. A copy of the proposed Agreement between your agency and the Property Appraiser and Tax Collector is attached as an action item for your consideration.

We respectfully request that you join us in our efforts to reduce the incidence of improper exemptions by executing the attached Agreement.

For your review only, also included is a copy of the agreement between TMA and the Property Appraiser and Tax Collector offices.

**Agreement for Use of Property Tax Collections to Fund
Exemption Audit Services**

THIS AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____, 2017, by and between the BREVARD COUNTY PROPERTY APPRAISER (“PROPERTY APPRAISER”), BREVARD COUNTY TAX COLLECTOR (“TAX COLLECTOR”), and the undersigned Local Governing Boards of the TAXING AUTHORITIES of Brevard County, hereinafter referred to collectively as the “TAXING AUTHORITIES.”

WHEREAS, the PROPERTY APPRAISER is responsible under Florida law for the administration of ad valorem property tax exemptions, including homestead exemption, and the preparing and filing of tax liens for back taxes related to the removal of undeserved exemptions; and

WHEREAS, the TAX COLLECTOR is responsible under Florida law for the collection and distribution of ad valorem property taxes, including back taxes and tax liens, and associated penalties, fees, and interest; and

WHEREAS, the TAXING AUTHORITIES receive local property tax revenue to fund essential public services; and

WHEREAS, the Parties to this Agreement recognize that there may be property owners on the Brevard County tax roll claiming undeserved and/or fraudulent personal exemptions from ad valorem property tax, such as the homestead exemption, (hereinafter collectively referred to as “Personal Exemptions”), which reduces property tax revenue and unfairly shifts the property tax burden to other property owners; and

WHEREAS, the PROPERTY APPRAISER and TAX COLLECTOR intend to contract with TAX MANAGEMENT ASSOCIATES, INC. (“TMA”) for audit services to identify properties with undeserved Personal Exemptions for the purpose of collecting taxes due on those properties, which funds would otherwise be unavailable to the TAXING AUTHORITIES (hereinafter the “TMA Audit Agreement”); and

WHEREAS, TMA shall provide said audit services in exchange for the fee established in the TMA Audit Agreement, which consists of an amount equal to twenty-eight percent (28%) of any tax, penalties, and interest collected from back taxes assessed or tax liens filed by the PROPERTY APPRAISER on parcels identified through a TMA audit as having undeserved Personal Exemption(s) (hereinafter, the “Fee”); and

WHEREAS, the Fee shall be paid exclusively from the taxes, penalties, and interest collected in relation to the removal of Personal Exemptions as a result of audits performed by TMA, and shall not constitute a pledge or general obligation of tax funds or create an obligation

on the TAXING AUTHORITIES to appropriate or make monies available for the purpose of this Agreement beyond the fiscal year in which the Agreement is executed; and

NOW, THEREFORE, the PROPERTY APPRAISER, TAX COLLECTOR, and undersigned TAXING AUTHORITY, for and in consideration of the mutual promises, covenants, and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

TERMS

1. Incorporation of Recitals. The recitals set forth above are hereby incorporated into and deemed a part of this Agreement.

2. Authorization of Reduced Collections for Fee Payment:

The undersigned TAXING AUTHORITY authorizes the TAX COLLECTOR to deduct TMA's Fee, as established in the TMA Audit Agreement, from the total property tax, penalties and interest collected as the result of the removal of Personal Exemption(s) pursuant to TMA audits. The TAX COLLECTOR shall distribute the remaining tax revenue to the undersigned TAXING AUTHORITY according to governing Florida law.

This Agreement does not constitute a pledge or general obligation of ad valorem taxation, or create any obligation on any TAXING AUTHORITY to appropriate or make monies available for any tax year, and does not create the right in any party to compel the exercise of the ad valorem taxing power of any TAXING AUTHORITY.

The TAX COLLECTOR shall annually make available to each TAXING AUTHORITY an accounting of all tax proceeds collected pursuant to the TMA Audit Agreement, the Fees paid to TMA, and the total funds distributed to each TAXING AUTHORITY.

3. Term & Termination: This Agreement shall be effective as of the date of execution for an initial term of twelve (12) months. Thereafter, the Agreement shall renew automatically on an annual basis until such time as the TMA Audit Agreement is terminated or otherwise expires. Upon termination or expiration of the TMA Audit Agreement, this Agreement automatically expires except for such provisions as survive termination as further agreed herein.

Any TAXING AUTHORITY may opt out of this Agreement provided it notifies the PROPERTY APPRAISER and TAX COLLECTOR in writing at least ninety (90) days before the end of a fiscal year. The option shall be effective upon the first day of the following fiscal year.

The parties acknowledge that TMA audit services shall not be provided for any parcel in a specific tax district if any TAXING AUTHORITY in that tax district does not sign, or

subsequently withdraws from, an agreement or memorandum of understanding for use of property tax collections to fund exemption audit services.

Upon termination of this Agreement, Fees for all audits completed by TMA in effected tax districts up to the date of the notification of termination shall be payable in accordance with the terms provided by the TMA Audit Agreement. Because tax liens may not be paid within the term of this Agreement, the authorization of reduced collections for Fee payment shall survive the termination of the Agreement, and shall terminate upon the later of the collection and payment of all liens related to TMA audits, or the expiration of such liens as a matter of Florida law.

4. Severability: Should any provision, portion, or application of this Agreement be determined by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any applicable law or constitutional provision, or should future changes to Florida law conflict with any portion of this Agreement, the parties shall negotiate an equitable adjustment in the affected provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions, or applications thereof, shall not be impaired. If a future change to Florida law conflicts with or preempts the entirety of this agreement, the agreement will be immediately terminated, subject to the termination provisions herein.

5. Public Records: The parties are public agencies subject to Florida's public records laws, including records retention, production, and confidentiality provisions. The PROPERTY APPRAISER and TAX COLLECTOR agree to retain all records maintained by their agencies and associated with the performance of this Agreement in compliance with applicable Florida records retention schedules, and to make all non-confidential or exempt records available for inspection or copying upon request and in compliance with Florida's public records laws.

6. Liability: The PROPERTY APPRAISER retains sole discretion and authority to grant, deny or remove exemptions, or file liens for undeserved Personal Exemptions in accordance with Florida law. All legal costs involving appeals of the removal of Personal Exemptions resulting from audits shall be the responsibility of the PROPERTY APPRAISER. The undersigned TAXING AUTHORITY has no decision-making authority in relation to exemptions or liens under this Agreement and assumes no liability for any claims, damages, losses, or expenses, direct, indirect or consequential, arising out of or resulting from the actions of TMA, the PROPERTY APPRAISER, or the TAX COLLECTOR under this Agreement or the TMA Audit Agreement.

7. Notice: Any notice required to be given under this Agreement shall be made in writing and sent by first class mail, postage paid, or by hand delivery to, the contact and address for the party as it appears on the signatory page of this Agreement.

8. Applicable Law: The terms and conditions of this Agreement shall be governed by the laws of the State of Florida.

9. Sole Benefit: This Agreement is for the sole benefit of the parties hereto, and in no event shall this Agreement be construed to be for the benefit of any third party, nor shall any party be liable for any loss, liability, damages or expenses to any person not a party to this Agreement.

10. Headings: Headings herein are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

11. Execution: The parties agree that this Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the proper officer of each, as of the date first written above.

PROPERTY APPRAISER:

DATE:

DANA BLICKLEY, CFA
PROPERTY APPRAISER
400 SOUTH STREET
TITUSVILLE, FL 32780
321-264-6700

APPROVED AS TO LEGAL FORM

For the Property Appraiser:

Signature: _____

TAX COLLECTOR:

DATE:

LISA CULLEN, CFC
TAX COLLECTOR
400 SOUTH STREET
TITUSVILLE, FL 32780
321-264-6969

APPROVED AS TO LEGAL FORM

For the Tax Collector:

Signature: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the proper officer of each, as of the date first written above.

TAXING AUTHORITY
NAME: _____

AUTHORIZED SIGNATURE: _____
PRINT NAME: _____
TITLE: _____
DATE SIGNED: _____

PRIMARY CONTACT: _____
ADDRESS 1: _____
ADDRESS 2: _____
CITY, STATE, ZIP: _____
PHONE: _____
EMAIL: _____

APPROVED AS TO LEGAL FORM

For the TAXING AUTHORITY:

Signature: _____

Name & Title: _____

**Tax Management Associates, Incorporated
& Brevard County, Florida
Agreement for Provision of Exemption Audit Services for Tax
Revenue Enhancement**

This Agreement (the "Agreement") is made and entered into this _____ day of _____, 2017 by and between the BREVARD COUNTY PROPERTY APPRAISER, with its principal place of business located at 400 South St. Titusville, FL 32780 ("PROPERTY APPRAISER"), the BREVARD COUNTY TAX COLLECTOR, with its principal place of business located at 400 South St. Titusville, FL 32780 ("TAX COLLECTOR"), and TAX MANAGEMENT ASSOCIATES, INC. [TMA] a company authorized to conduct business in Florida, to assist the PROPERTY APPRAISER through the performance of audits to verify entitlement to personal exemptions from ad valorem taxation granted on the County tax roll. The PROPERTY APPRAISER, TAX COLLECTOR, and TMA are hereinafter jointly referred to as "Parties."

Contractual services may begin upon full execution of this contract.

WITNESSETH:

WHEREAS, the PROPERTY APPRAISER is responsible under Florida law for the administration of ad valorem property tax exemptions and the preparing and filing of tax liens for back taxes related to the removal of undeserved exemptions; and

WHEREAS, the TAX COLLECTOR is responsible under Florida law for the collection and distribution of ad valorem property taxes, including tax liens, and associated penalties, fees, and interest; and

WHEREAS, the PROPERTY APPRAISER desires to obtain services to Audit the Brevard County tax roll (hereinafter "Audit Services") to identify undeserved personal exemptions from ad valorem property tax. Such exemptions include, but may not be limited to, the homestead exemption granted pursuant to Article VII, section 6 of the Florida Constitution, and exemptions governed by Chapters 193 and 196, Florida Statutes (hereinafter collectively "Personal Exemptions"); and

NOW, THEREFORE, in consideration of the promises mutually exchanged, the Parties agree as follows:

- 1) **INCORPORATION OF RECITALS.** The recitals set forth above are hereby incorporated into and deemed a part of this Agreement.
- 2) **EXEMPTION AUDIT SERVICES**
 - a. TMA agrees to furnish Audit Services to identify undeserved Personal Exemptions on the Brevard County tax roll. The Audit Services provided by

TMA will be performed in accordance with the terms and conditions in this Agreement and in compliance with all applicable Florida law.

- b. It is expressly agreed by the Parties that the PROPERTY APPRAISER shall retain the final discretion to act on any and all Audit recommendations made by TMA. The PROPERTY APPRAISER shall remove Personal Exemptions and prepare and file tax liens in accordance with governing Florida law and PROPERTY APPRAISER internal policies and procedures. The PROPERTY APPRAISER retains the right to limit a lien to certain tax years, waive penalties and interest, or revoke a lien, as allowed by Florida law. This Agreement does not, and shall not be construed to delegate any of the PROPERTY APPRAISER'S statutory duties, obligations, or decision-making authority related to the administration of exemptions.
- c. The PROPERTY APPRAISER shall assign properties to TMA for Audit Services as may hereafter be deemed appropriate. TMA agrees that no TMA employee will discuss any aspect of an Audit being performed, except with authorized TMA personnel, authorized PROPERTY APPRAISER or TAX COLLECTOR officials, and the property owner being audited (to the extent hereafter determined appropriate by the PROPERTY APPRAISER), unless otherwise directed to do so by the PROPERTY APPRAISER. All correspondence to property owners in connection with audits will be signed by the PROPERTY APPRAISER or by its authorized designee.
- d. TMA agrees to audit all Personal Exemptions assigned for Audit for the most current year and applicable prior years in compliance with Florida Statutes, which provide for property tax liens for undeserved Personal Exemption for up to ten (10) years.
- e. The PROPERTY APPRAISER agrees to make available to TMA the Brevard County tax roll of granted exemptions for the years for which audits are to be performed. Additionally, as necessary, the PROPERTY APPRAISER may make available copies of Personal Exemption applications and supporting documents, or information provided in said applications, subject to confidentiality provisions established by Florida law and addressed in Section (3), herein.
- f. TMA agrees to provide training to designated employees of the PROPERTY APPRAISER as to all aspects of the Audit Services provided pursuant to this Agreement. Any appropriate designee of the PROPERTY APPRAISER may perform an Audit with TMA personnel, provided the PROPERTY APPRAISER shall be responsible for any related expenses of such PROPERTY APPRAISER employee.

3) PUBLIC RECORDS RETENTION & CONFIDENTIALITY

- a. The PROPERTY APPRAISER and TAX COLLECTOR are public agencies subject to Florida's Public Records Law, including records retention, production, and confidentiality provisions.

- b. TMA and its employees and agents shall be bound by all applicable public records laws to the same extent that those laws apply to the PROPERTY APPRAISER and TAX COLLECTOR, (collectively the “public agency”). These requirements include but may not be limited to those stated in Chapter 119, Florida Statutes, and Sections 193.114 and 193.074 Florida Statutes, under which social security numbers, Personal Exemption applications and supporting documents and any information provided within the application or supporting documents, are CONFIDENTIAL and EXEMPT from disclosure.
- c. Specifically, TMA agrees to
- i. Keep and maintain public records required by the public agency to perform the Audit Services.
 - ii. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of the contract if the contractor does not transfer the records to the public agency.
 - iv. Upon completion of this Agreement, transfer, at no cost to the public agency, all public records in possession of TMA or keep and maintain public records required by the public agency to perform the Audit Services. If TMA transfers all public records to the public agency upon completion of this Agreement, TMA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If TMA keeps and maintains public records upon completion of this Agreement, TMA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency’s custodian of public records, in a format that is compatible with the information technology systems of the public agency.

4) COSTS AND PAYMENT FOR AUDIT SERVICES:

- a. For services furnished under this Agreement TMA shall be paid an amount equal to twenty-eight percent (28%) of the gross taxes, penalties, and interest collected by the Tax Collector in relation to the removal of Personal Exemptions as a result of any audit performed by TMA (hereinafter the “Fee”).
- i. The Property Appraiser shall file liens on properties submitted by TMA as ineligible for the homestead exemption when the Property Appraiser

has determined in his sole discretion that such properties are ineligible for the exemption.

- ii. If, prior to filing a lien, the Property Appraiser determines in his sole and absolute discretion to not pursue the lien as such filing is not warranted or not supportable in a court of law, then such audit services shall be considered to not have produced any compensable service.
 - iii. If, after filing a lien, the Property Appraiser determines to remove or delete, or otherwise abate amounts that are not properly owed on homestead properties as previously determined to be ineligible for the homestead exemption through the TMA audit, then TMA will not be paid on such amounts meeting these criteria.
- b. The Fee shall be calculated upon full or partial payment of any qualifying tax lien, whether payment is made prior to or after recording of the lien, and shall be calculated based on taxes levied by all taxing authorities in the tax district of the audited property for each tax year, pursuant to associated Interlocal Agreements with each taxing authority. If no Interlocal Agreement exists with a specific taxing authority for whatever reason, the PROPERTY APPRAISER shall not provide Personal Exemptions for that non-participating taxing authority to TMA for Audit Services. The partial or full payment of any tax lien arising during a period of non-participation by a taxing authority is not a qualifying tax lien, and no portion of the collection of a non-qualifying tax lien shall be included in the calculation of fees due TMA.
 - c. The Fee shall be paid exclusively from the taxes, penalties, and interest collected in relation to the removal of Personal Exemptions as a result of audits performed by TMA. The Fee shall not be payable from future ad valorem tax levies.
 - d. This Agreement does not constitute a pledge or general obligation of ad valorem taxation, or create any obligation on any taxing authority to appropriate or make monies available for the purpose of the Agreement for any tax year. This Agreement does not create the right in any party to compel the exercise of the ad valorem taxing power of any taxing authority, and does not impair the taxing power of any taxing authority.
 - e. To facilitate TMA's billing for audit fees, the Tax Collector agrees to provide TMA a monthly report listing all taxes, penalties and interest collected as a result of TMA's audits. The report shall include the parcel number, property owner, site address of the properties audited, total collected amount and the collection date. This report, if possible, should be in spreadsheet format; if not available in spreadsheet format, a system-generated report will be acceptable. TMA shall then invoice the Tax Collector monthly for applicable Audit Fees based on the Tax Collector's monthly report. Audit Fees will be due and payable within fifteen (15) days following the billing date.
 - f. If the TAX COLLECTOR distributes a TMA Fee based on a lien payment that is subsequently reversed for any reason—including but not limited to a correction to the tax roll, a final judgment in a lawsuit, or a bounced check—the TAX

COLLECTOR provides notice to TMA and TMA shall return the Fee to the Tax Collector. If, in a month immediately following the payment reversal, the total balance of TMA Fees for the monthly distribution exceeds the Fee made pursuant to the reversed payment (the "reversed Fee"), said reversed Fee will be withheld from the monthly distribution. Any such withholding will be reflected in the TAX COLLECTOR'S monthly report. If the balance of the TMA Fees in the following month is not sufficient to cover the reversed Fee, the TAX COLLECTOR will send TMA a bill for the remainder of the reversed fee, and TMA will remit the full amount billed within 30 days. Regardless, the Tax Collector may continue to withhold from payments owed to TMA such amounts as necessary to recover all reversed Fees. Should a reversed payment be subsequently repaid or otherwise restored for any reason, TMA retains the right to the reversed Fee, which will be redistributed upon receipt by the TAX COLLECTOR of a new payment, in full accordance with this Agreement.

- g. Collections on all properties the Property Appraiser authorizes TMA to send a Homestead Audit Questionnaire to that are identified by TMA as potentially having received undeserved Personal Exemption(s) shall be construed to be the result of the provided Audit Services and shall be subject to TMA's Fee under these payment provisions. However, no fee shall be paid on properties the Property Appraiser identified as potentially having received undeserved Personal Exemptions prior to providing TMA the Personal Exemption data file, or if the PROPERTY APPRAISER discovers an undeserved Personal Exemption on a property that was not identified by TMA as potentially having received undeserved Personal Exemption(S), no Fee shall be paid in relation to that property.
 - i. Each individual property, as denoted by the parcel identification number on the property tax roll, shall be treated as a separate account under these payment terms. Any individual account is severable and treated as unique and distinct in terms of the amount owed to TMA for services provided under this contract. Payments of the Fee for multiple accounts may be made together provided that an accounting of the Fee for each individual account is provided.
- h. All expenses incurred by TMA in performing audits under this Agreement including, but not limited to, travel, food, lodging, mileage, postage, salaries, etc. shall be the responsibility of TMA. TMA shall maintain a sufficient workforce of employees necessary to provide the contracted services, and there shall be no additional compensation paid to TMA for said employees.
- i. All legal costs involving appeals of the removal of Personal Exemptions resulting from audits shall be the responsibility of the PROPERTY APPRAISER. TMA shall be responsible for defending its audit findings throughout any appeals process, as appropriate and necessary, without additional cost to the PROPERTY APPRAISER. Defense of audit findings may include personal appearances at meetings with property owners or their representatives, and provision of testimony and evidence concerning information identified in an audit at any administrative, judicial, or quasi-judicial hearings.

5) **TERMINATION**

- a. This Agreement shall become effective from the date entered above and shall remain in effect for an initial term of twelve (12) months from the effective date as specified in a Notice to Proceed letter issued to TMA by the PROPERTY APPRAISER, and at the PROPERTY APPRAISER'S election, in his sole discretion, shall continue in effect thereafter on a year-to-year basis, but not to extend beyond April 12, 2021. After the initial term, any Party can terminate this agreement by providing thirty (30) days' notice of termination to the other Parties in writing.
- b. If through any cause, TMA, the PROPERTY APPRAISER, or the TAX COLLECTOR fails to fulfill its obligations as provided by this Agreement, or materially violates any of the covenants or stipulations within this Agreement, or becomes unsatisfied with services rendered, and such failure or violation continues for thirty (30) days after written notice thereof by a Party, any Party shall thereupon have the right to terminate this Agreement immediately upon giving written notice to the other Parties. Said notice shall be delivered to the Parties by hand delivery or first class mail, postage paid to the mailing address as specified herein under "Notice."
- c. In the event that the two largest county-wide taxing authorities terminate the Interlocal Agreement or sufficient funds are otherwise not available to support this Agreement for a new fiscal period, the PROPERTY APPRAISER shall notify TMA of such occurrence and the Agreement shall terminate on the last day of the current fiscal period without penalty or expense. In the event of such termination, Fees for all Audits completed by TMA up to the date of the notification of termination of the Interlocal Agreement or insufficient budgeted funds shall be payable in accordance with the terms provided by this Agreement.
- d. In the event of termination for any reason other than those specified in paragraph 5)c., all Audits assigned to TMA and on which TMA has initiated work or expended resources, shall be completed by TMA and all Fees for completed audits shall be payable in accordance with the terms as provided by this Agreement. Because tax liens may not be paid within the term of this Agreement, provisions related to the payment of Fees shall survive the termination of the Agreement term, and shall terminate upon the later of the collection and payment of all liens related to TMA audits, or five (5) years after a lien has been filed.
- e. Upon completion of all Audits, TMA shall provide any records related to this Agreement to the PROPERTY APPRAISER for record retention purposes, as further addressed in Section (3), herein.

6) **GENERAL PROVISIONS**

- a. **INDEMNIFICATION:** To the fullest extent permitted by law, TMA shall indemnify, defend and hold harmless the PROPERTY APPRAISER, TAX COLLECTOR, the taxing authorities, and their officials, agents, and employees, from and against all claims, damages, losses and expenses, direct, indirect or consequential (including, but not limited to, fees and charges of attorneys and

other professionals and costs related to court action or arbitration) arising out of or resulting from the performance of this contract or the actions of TMA or its officials, employees, agents, or contractors under this Agreement or under any agreements entered into by TMA in connection with this Agreement. This indemnification shall survive the termination of this Agreement.

- b. **NON-DISCRIMINATION:** TMA represents that it has adopted and will maintain throughout the term of this Agreement a policy of nondiscrimination or harassment against any person with regard to race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, political affiliation, national origin, disability, age, marital status, veteran status, or any other impermissible factor in recruitment, hiring, compensation, training, placement, promotion, discipline, demotion, transfers, layoff, recall, termination, working conditions and related terms and conditions of employment.
- c. **LAW CONTROLLING:** The laws of the state of Florida shall control and govern this Agreement.
- d. **NON-ASSIGNMENT:** This Agreement is not assignable by any Party, by operation of law or otherwise.
- e. **MODIFICATION:** This Agreement may be modified only by a written agreement executed by all Parties hereto.
- f. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement of the Parties and no other agreement or modification to this agreement, expressed or implied, shall be binding on any Party unless same shall be in writing and signed by all Parties. This Agreement may not be orally modified. Any modifications must be in writing, expressly titled a modification or addendum to this Agreement, attached to this Agreement, and signed by all Parties.
- g. **SEVERABILITY:** Should any provision, portion, or application thereof of this Agreement be determined by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any applicable law or constitutional provision, or should future changes to Florida law conflict with any portion of this Agreement, the Parties shall negotiate an equitable adjustment in the affected provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions, or applications thereof, shall not be impaired. If a future change to Florida law conflicts with or preempts the entirety of this Agreement, the Agreement will be immediately terminated, subject to the public records provisions herein.
- h. **HEADINGS:** The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by all Parties, and no purposes of interpretation shall be made to the contrary.

- i. **NOTICE:** Any notices to be given or submitted by any Party to the others pursuant to this Agreement shall be made in writing and sent by first class mail, postage paid or by hand delivery to:

PROPERTY APPRAISER:
BREVARD COUNTY PROPERTY APPRAISER
400 South Street
Titusville, FL 32780
ATTN: Dana Blickley, Property Appraiser

TAX COLLECTOR:
BREVARD COUNTY TAX COLLECTOR
400 South Street
Titusville, FL 32780
ATTN: Lisa Cullen, Tax Collector

TMA:
TAX MANAGEMENT ASSOCIATES, INC
2225 Coronation Blvd.
Charlotte, NC 28227
ATTN: Richard Cooke, Jr., Chief Executive Officer

EXECUTED AND ENTERED INTO BY THE PARTIES HERETO.

PROPERTY APPRAISER AUTHORIZED SIGNATURE:

Dana Blickley
TITLE: As PROPERTY APPRAISER
BREVARD COUNTY PROPERTY APPRAISER

DATE: _____

**STATE OF FLORIDA
COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by, **Dana Blickley as Brevard County Property Appraiser**, who is personally known to me or has produced _____ as identification. _____

Notary Public Signature _____ Notary Seal:

TAX COLLECTOR AUTHORIZED SIGNATURE:

Lisa Cullen
TITLE: As TAX COLLECTOR
BREVARD COUNTY TAX COLLECTOR

DATE: _____

**STATE OF FLORIDA
COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by
Lisa Cullen as Brevard County Tax Collector, who is personally known to me or has produced
_____ as identification. _____

Notary Public Signature _____

Notary Seal:

TMA AUTHORIZED SIGNATURE:

Richard Cooke, Jr.
TITLE: As CHIEF EXECUTIVE OFFICER
TAX MANAGEMENT ASSOCIATES, INC

DATE: _____

**STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg**

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by,
_____ as _____ of _____,
on behalf of the company, who is personally known to me or has produced _____ as identification.

Notary Public Signature _____

Notary Seal:

APPROVED AS TO LEGAL FORM AS TO
THE PROPERTY APPRAISER AND TAX
COLLECTOR ONLY BY THE
OFFICE OF GENERAL COUNCIL, BREVARD COUNTY

Signature: _____

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 7
Workshop Meeting Date: February 6, 2017

Prepared By: Debby Franklin, CMC, Town Clerk/Treasurer

SUBJECT: Approve Contract between Town and Malabar Community Association

BACKGROUND/HISTORY:

The Town Council directed staff to work with attorney on a contract to cover the SpringFest 2017 event. The intent was to have this contract between the Town and the newly formed Association to allow them to put on the event.

ATTACHMENTS:

Draft Contract

ACTION OPTIONS:

Staff requests Action.



SPRINGFEST EVENT PLANNING AGREEMENT

This Agreement is made this ___ day of _____, 2017 by and between MALABAR COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation (MCA), and the TOWN OF MALABAR, a Florida municipal corporation (TOWN).

WHEREAS, The TOWN promotes community engagement through events that enhance and exemplify the spirit of the Town of Malabar. Such events create a sense of community involvement and community harmony among residents who plan and enjoy social, recreational, and educational activities, utilizing the town's abundant parks and community resources, year-round; and,

WHEREAS, the TOWN desires to continue to promote the sense of community through such events; and,

WHEREAS, MCA, is a Florida not-for-profit corporation and desires to promote, plan and run the "Malabar SpringFest"; and

WHEREAS, the TOWN is the owner of that certain public parks and amenities where such events have traditionally been held; and

WHEREAS, MCA and the TOWN desire to enter this Agreement for the purpose of evidencing the Agreement of the parties with regard to the planning, promoting and the running of the 2017 Malabar SpringFest;

NOW, THEREFORE in consideration of the promises and the mutual covenants and obligations contained herein, the parties agrees as follows

I. Term and Payment

This Agreement shall be for a term beginning on the date above and running through until April 10, 2017. The Town agrees to hire MCA to plan and run the event for a flat sum of \$_____. Payments shall be made in accordance with the payment schedule attached hereto. MCA agrees to rent the needed Town facilities from the town for the sum of \$_____. In the event the 2017 SpringFest does not occur MCA shall refund any and all funds advanced to it by the Town.

II. Use of Facilities

MCA may utilize certain public facilities of the TOWN for the holding of events for which MCA has been hired to plan and hold. The following is a list of facilities which shall be available for MCA to hold the contracted for events, as well as the charge for the use of the facility and the particular event Associated with that facility:

<u>EVENT</u>	<u>FACILITY</u>	<u>DATE</u>
2017 SpringFest	Malabar Community Park 1850 Malabar Rd	3/25/2017 10 a.m.-6 p.m.

III. Obligation of the Town

Both parties to this Agreement agree that during the term of this Agreement the TOWN shall:

1. Provide the following maintenance and repairs in a manner generally equal to normal TOWN maintenance and repair of similar Town recreational facilities prior to the commencement of this Agreement. MCA shall be responsible for all such maintenance and repair occasioned by their use of the facility. It is understood and agreed the TOWN's obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds are available for performance of its obligations. It is further understood and agreed that if the TOWN is unable to meet its obligations MCA may at its sole cost and expense perform such repair or maintenance upon written approval by the TOWN, which shall include approval by the Town of the contractor to perform such work.
2. Authorize the use of the Town's logo on any promotional materials; provided, that the Town's logo may be used on material for soliciting donations with the conditions that such material clearly states that the donation is being made to the Malabar Community Association, Inc., and not the Town of Malabar.

IV. Obligations of MCA

A. General Obligations. Both parties to this Agreement agree that with respect to a particular event, MCA shall:

1. At no cost or expense to the TOWN, provide the following maintenance repair:
 - a. Pick up all paper and debris; and place in trash receptacles within 24 hours of the end of the event.
 - b. Provide for any special needs or services such as additional portable bathrooms, security or traffic control devices or officers needed as a result of MCA's use of the facilities.
 - c. Provide a dumpster.
2. Comply with all applicable ordinances, rules and regulations, including, but not limited to, Chapter 10, Malabar Code, 10-257 -10-264 (attached).
3. May place in-ground sponsorship banners at the facilities, however, any damage done or caused by these hangings will be the responsibility of MCA.
4. Provide the name, address, telephone number and email address of the main contact person for MCA and an alternate contact and notify the TOWN promptly upon any changes in such personnel during the term of this Agreement.
5. MCA shall not discriminate against any person or persons because of race, color, religion, sex, disability or national origin.
6. MCA shall not perform any construction, maintenance, repair or alteration to the facilities (unless permitted or required by this Agreement), without the prior written consent of the TOWN. Any and all improvements made to the facilities shall become the property of the TOWN.
7. Comply with all State laws, rules and regulations and all Town codes, rules and regulations.
8. MCA shall apply for and receive a Special Events Permit and other permits as required from the own prior to commencement of the event. Such application for permit shall be made at least 30 days prior to the scheduled 2107 SpringFest.

B. Specific Obligation Relating to Events Run by MCA

1. With respect to any event for which MCA has been hired by the TOWN to plan and run, MCA shall:
 - a. Contact food, drink, recreational and other vendors to participate in such events;
 - b. Coordinate with all vendors as to logistics, location, timing, products for sale, and other matters for a safe and convenient event;
 - c. Coordinate free demonstrations by local law enforcement, fire department and other emergency services; coordinate booths and demonstrations or shows by conservation groups, EEELs, forestry service, etc.
 - d. promote the event through the use of flyers, mailings, print media, and electronic mediums.
 - e. Coordinate and set up recreational opportunities and programs for children.
2. Provide a final accounting to the Town of monies received and spent, whether from donations, merchandise sales, vendor leases or any other source for the event by April 10, 2017

V. Assignability and Exclusivity

This Agreement is a privilege for the benefit of MCA only and may not be assigned in whole or in part by MCA to any other person or entity.

VI. Insurance and Indemnification

MCA shall at all times during the term of this Agreement maintain in effect all insurance as required by Chapter 10 of the Code of Ordinances of the Town for Special Events.

VII. Notices

Unless otherwise provided herein, any notice, tender or delivery to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed as set forth, but each party may change its address by written notice in accordance with this section.

MALABAR COMMUNITY ASSOCIATION, INC
346 Camelot Circle
Malabar, Florida 32950
Tel: (321) _____
Email: _____

TOWN:
Doug Hoyt, Town Administrator
TOWN OF MALABAR
2725 Malabar Road
Malabar, Florida 32950-4427
Email: dhoyt@townofmalabar.org

Any such notice shall be effective upon receipt if delivered in person or upon actual deposit in an official receptacle of the United States Postal Service, if mailed as aforesaid.

Miscellaneous Provisions.

1. No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representatives of the parties hereto.

2. This Agreement shall be construed under and in accordance with the laws of the State of Florida, and all obligations of MCA and the TOWN created hereunder are performable in Brevard County, Florida.
3. Nothing in this Agreement shall be construed to make the TOWN or its respective agents or representatives liable in situations it is otherwise immune from liability.
4. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
5. Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body, and that this Agreement is binding and enforceable as to each party.
6. This agreement may be cancelled by either party by giving the other 30 days written notice.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below.

MALABAR COMMUNITY ASSOCIATION, INC.:

ATTEST:

Secretary: _____

Date: _____

Date: _____

ATTEST:

TOWN OF MALABAR

Debby K. Franklin, Town Clerk/Treasurer

Doug Hoyt, Town Administrator

Date: _____

Date: _____

Detail by Officer/Registered Agent Name

Florida Not For Profit Corporation
MALABAR COMMUNITY ASSOC. INC.

Filing Information

Document Number N17000000707
FEI/EIN Number NONE
Date Filed 01/19/2017
Effective Date 01/18/2017
State FL
Status ACTIVE

Principal Address

346 CAMELOT CIRCLE
MALABAR, FL 32950

Mailing Address

PO BOX 500827
MALABAR, FL 32950 08

Registered Agent Name & Address

INCOME TAX & MORE
2800 AURORA RD
SUITE G
MELBOURNE, FL 32935

Officer/Director Detail**Name & Address**

Title P

RITTER, LIZ
PO BOX 500827
MALABAR, FL 32950

Title TREA

SCANNELLI, TERESA
373 CAMELOT CIRCLE
MALABAR, FL 32950

Annual Reports

No Annual Reports Filed

Document Images

[01/19/2017 -- Domestic Non-Profit](#)

[View image in PDF format](#)

**Electronic Articles of Incorporation
For**

N17000000707
FILED
January 19, 2017
Sec. Of State
jafason

MALABAR COMMUNITY ASSOC. INC.

The undersigned incorporator, for the purpose of forming a Florida not-for-profit corporation, hereby adopts the following Articles of Incorporation:

Article I

The name of the corporation is:

MALABAR COMMUNITY ASSOC. INC.

Article II

The principal place of business address:

346 CAMELOT CIRCLE
MALABAR, FL. 32950

The mailing address of the corporation is:

PO BOX 500827
MALABAR, FL. 08 32950

Article III

The specific purpose for which this corporation is organized is:

ANY AND ALL LAWFUL PURPOSES

Article IV

The manner in which directors are elected or appointed is:

AS PROVIDED FOR IN THE BYLAWS.

Article V

The name and Florida street address of the registered agent is:

INCOME TAX & MORE
2800 AURORA RD
SUITE G
MELBOURNE, FL. 32935

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: JOSEPH M. DANIELLE

N1700000707
FILED
January 19, 2017
Sec. Of State
jafason

Article VI

The name and address of the incorporator is:

JOSEPH M. DANIELLE
2800 AURORA RD
SUITE G
MELBOURNE, FL 32935

Electronic Signature of Incorporator: JOSEPH M. DANIELLE

I am the incorporator submitting these Articles of Incorporation and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of this corporation and every year thereafter to maintain "active" status.

Article VII

The initial officer(s) and/or director(s) of the corporation is/are:

Title: P
LIZ RITTER
PO BOX 500827
MALABAR, FL. 32950

Title: TREA
TERESA SCANNELLI
373 CAMELOT CIRCLE
MALABAR, FL. 32950

Article VIII

The effective date for this corporation shall be:

01/18/2017

Debby Franklin

From: kbohne@fla-lawyers.com
Sent: Thursday, February 02, 2017 5:20 AM
To: Debby Franklin
Subject: Fwd: Events Committee

Sent from my Sprint Samsung Galaxy S® 6.

----- Original message -----

From: Terry Vale <tvalecats@yahoo.com>
Date: 2/1/17 8:07 PM (GMT-05:00)
To: Liz Ritter <flizritter@aol.com>, Phillip Crews <philcrews@hotmail.com>, Hans Kemmler <ib@hanskemmler.com>, Rickie Bisnath <trintech2874@gmail.com>, Meghan Wolfgram <meghanwolfgram@gmail.com>, "Douglas C. Hoyt" <dhoyt@townofmalabar.org>, Denine Sherear <dsherear@townofmalabar.org>, Sara Merino <laprofemerino@gmail.com>, Dick Korn <cmdist4@townofmalabar.org>, Grant Ball <cmdist1@townofmalabar.org>, Laura Mahoney <darien8@gmx.com>, flizritter@aol.com, kbohne@fla-lawyers.com, Pat Reilly <mayor@townofmalabar.org>
Subject: Events Committee

 FYI - All meetings are cancelled until further notice. If I missed anyone please forward. Thank You 

TOWN OF MALABAR
MALABAR COMMUNITY ASSOC. MEETING
THURSDAY, FEBRUARY 2, 2017
6:30 PM
MALABAR COUNCIL CHAMBERS
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER-** Opening Prayer & Pledge
- B. INTRODUCTION-** Welcome all and introduce one another
- C. ROLL CALL/ MINUTES**
- D. SPONSORS & DONATIONS:**
 - >Bring lists/ distribute
- E. REVIEW MAPS and SIGN UP SYSTEM**
 - > Discussion and finalize
- F. WEBSITE**
- G. PREPARE for FEBRUARY 11th**
 - > meeting at park at 2pm?
- H. ADJOURNMENT**

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIAL ATTENDING THIS MEETING.

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 insure that a verbatim transcript of the proceedings is made (Florida Statute 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's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.