

**TOWN OF MALABAR  
REGULAR TOWN COUNCIL MEETING  
MONDAY, APRIL 16, 2018, 7:30 PM  
2725 MALABAR ROAD, MALABAR, FLORIDA  
AGENDA**

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:**
- D. CONSENT AGENDA:**
  - 1. Approve Regular Town Council Meeting Minutes 03/19/2018**
    - Exhibit:** Agenda Report 1
    - Recommendation:** Request Approval
- E. ATTORNEY REPORT:**
- F. STAFF REPORTS: ADMINISTRATOR, CLERK, FIRE CHIEF**
- G. 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.**
- H. PUBLIC HEARINGS/SPECIAL ORDERS: 0**
- I. UNFINISHED BUSINESS/GENERAL ORDERS  
ORDINANCES FOR FIRST READING: 0;**

**RESOLUTIONS: 1;**

**2. Reso 01-2018 Declaring and Creating a Special Assessment**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AUTHORIZING, DECLARING AND CREATING A SPECIAL ASSESSMENT FOR THE HARD SURFACING OF SMITH LANE, SOUTH OF ATZ ROAD FOR A DISTANCE OF 2,224 FEET; PROVIDING FOR THE ESTIMATE OF TOTAL COSTS OF SAID IMPROVEMENTS; DESIGNATING THE PORTION OF THE IMPROVEMENT TO BE PAID BY SPECIAL ASSESSMENT; DESIGNATING WHEN THE SPECIAL ASSESSMENT SHALL BE PAID; DESIGNATING THE LANDS UPON WHICH THE SPECIAL ASSESSMENT SHALL BE LEVIED; PROVIDING FOR AN ASSESSMENT PLAT AND THE CREATION OF A PRELIMINARY ASSESSMENT ROLL; PROVIDING FOR PUBLICATION AND NOTIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report 2  
**Recommendation:** Request Approval

**MISCELLANEOUS: 1**

**3. Possible Sale of Huggins Park**

**Exhibit:** Agenda Report 3  
**Recommendation:** Direction to Staff

**J. DISCUSSION/POSSIBLE ACTION:**

**4. Referendum Questions: Binding and non-binding on 2018 Ballot**

**Exhibit:** Agenda Report 4  
**Recommendation:** Discussion and Direction

**K. PUBLIC COMMENTS: General Items (Speaker Card Required)**

**L. REPORTS – MAYOR AND COUNCIL MEMBERS**

**M. ADJOURNMENT:**

If a person decides to appeal any decision made by this board, agency or commission with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 1**  
**Meeting Date: April 16, 2018**

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

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**SUBJECT: Approval of Minutes**

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**BACKGROUND/HISTORY:**

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

- Regular Town Council Meeting – 03/19/2018 - BRIEF VERSION 3 pages
- Regular Town Council Meeting – 03/19/2018 - REGULAR VERSION 6 pages

The brief version is all that is legally required by statute and by Robert's Rules. Each Council can direct staff on how short or long they want the minutes.

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

**ATTACHMENTS:**

Draft Minutes of 03/19/18 – 2 sets

**ACTION OPTIONS:**

The Town Clerk requests approval of the preferred type of minutes: brief or regular.



**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES**  
**MARCH 19, 2018                      7:30 PM**

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

**A.     CALL TO ORDER:**

Council Chair, Mayor Patrick Reilly called the meeting to order at 7:30 pm. ~~CM Danny White 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

DANNY WHITE

TOWN ADMINISTRATOR:

DOUGLAS HOYT

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

~~For the record, Malabar Fire Chief Mike Foley is not present.~~

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

CM Mahoney also asked to remove #4 as regulations for pharmacies should also go to PZ Board first. Chair asked for Vote: All Ayes to send Ord 2018-03 to P&Z Board.

**D.     CONSENT AGENDA:**

**1. Regular Town Council Meeting Minutes 3/05/18**

**Exhibit:** Agenda Report No. 1

**Recommendation:** Request Approval

**MOTION:** CM Rivet / CM Ball to approve the 3/19/18 minutes as presented.

Chair asked if there were any changes.

**Vote:** Ayes, 5; Nay, 0.

**E.     ATTORNEY REPORT:** nothing

**I.     STAFF REPORTS:**

**ADMINISTRATOR:** PW continues to work on stormwater project at the west end of Hall Road. TA continued that Engineer Morris Smith finished the drawings for the Atz Road piping project with catch basins. The Eva Lane hard surfacing project started last week.

**FIRE CHIEF:** Deputy Chief Joe Giantonio made report. (attached)

**CLERK:** Nothing

**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.**

Speaker Card: Skip Hard read from paper.

**K.     PUBLIC HEARINGS/SPECIAL ORDERS: 1**

**2. Building Codes Adopted (Ord 2018-01)**

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



CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.

**Exhibit:** Agenda Report 2  
**Recommendation:** Request Adoption Ord 2018-01

Ordinance read by title only.

**PH opened:** none

**PH closed:**

**MOTION:** CM Rivet / CM White to adopt Ord 2018-01.

**ROLLCALL Vote:** CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye. Motion Carried 5 to 0.

**L. UNFINISHED BUSINESS/GENERAL ORDERS**  
**ORDINANCES FOR FIRST READING: 2-1 (one was pulled)**

**3. Sign Code Update (Ord 2018-02) 1st Reading**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE TOWN; AMENDING ARTICLE XIX; AMENDING DEFINITIONS; AMENDING SECTIONS RELATING TO EXEMPTIONS; PROVIDING FOR REGULATIONS OF TEMPORARY SIGNS; PROVIDING FOR PROHIBITED SIGNS AND EXCEPTIONS; PROVIDING FOR SIGN REGULATIONS FOR ALL ZONING DISTRICTS; PROVIDING FOR SIGNS EXEMPT FROM PERMITTING; PROVIDING FOR PROHIBITED SIGNS AND EXEMPTIONS; PROVIDING FOR ADMINISTRATION, ANNUAL LICENSE; PROVIDING FOR APPEALS AND VARIANCE; PROVIDING FOR REGULATIONS OF NONCONFORMING SIGNS; PROVIDING REGULATIONS CONCERNING HAZARDOUS SIGNS; PROVIDING FOR PERMIT, CERTIFICATE AND LICENSE FEES; PROVIDING FOR GENERAL SIGN REGULATIONS; AMENDING TABLE 1-19.18; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3  
**Recommendation:** Approval of 1<sup>st</sup> Reading of Ord 2018-02

Ordinance read by title.

Speaker Card: Liz Ritter – When the PZ Board did their recommendation to Council the Attorney said they did a good job.

**MOTION:** CM Rivet / CM White to approve Ord 2018-02 on 1<sup>st</sup> Reading.

CM Mahoney said P&Z asked for clean copy and why sign fees are no longer charged and got no response. In going through the Ord after P&Z the Atty had to eliminate content based signage. CM White said send it back to P&Z as a clean copy and ask them to review it and submit their recommendation. Atty said signs by their very nature are content based.

Atty said they may want to simplify it. CM Ball raised good point – making it simpler. Atty said there should be permit fees. Franklin clarified that the building permit fees have been and continue to be collected for signage permits. The Attorney is referring to an annual sign fee. That collection process was stopped in 2002 and would have to be completed restarted from the ground up. There is nothing that can be reactivated. Physical inventory of signs would be required and there is no staff to do that function.

Mayor said his concern is if the ordinance is dumbed down to the point that it defeats the Supreme Court ruling. CM Ball asked how do we go too far if it is content neutral?

**MOTION:** CM Mahoney / CM Rivet to table and send to P&Z Board. Vote: All Ayes.  
 Franklin will send clean copy to Board.

Pulled to send to P&Z first.

**4. Pharmacy and Medical Marijuana Dispensary Regulations (Ord 2018-03) 1st Reading**



**RESOLUTIONS: 0**

**MISCELLANEOUS: 1**

**5. Allocate Road Materials (acct 541.4610) funds to Complete Quarterman Lane Improvements of the Approved Portion of Road**

**Exhibit:** Agenda Report 5

**Recommendation:** Council Approval

**MOTION:** CM White / CM Rivet to approve this allocation from the approved budget line item.

Discussion: CM Mahoney said so the 15K being requested is less than what was reported in in package. Franklin stated the agenda report listed the approved budget amount and the current estimate of the remainder of that line item – not the estimated cost.

**Vote:** All Ayes.

**M. DISCUSSION/POSSIBLE ACTION:**

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

**O. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Ball: Suggested starting the budget workshops earlier this year. CM Ball said the process seemed to sneak up on them last year.

CM Mahoney: (Report attached) Thanked public for their input. They can use public input by asking Clerk about the Budget to Actual and having it explained. Also asked at the last meeting for a PW report on what had been completed.

CM Rivet: Nothing

CM Korn: Website is very informative.

Mayor: thanked everyone for the SCLC Dinner Mtg last week. He also wanted to thank Debby and Rebekah of Grant Valkaria for their efforts in its success.

**P. ANNOUNCEMENTS:**

**Q. ADJOURNMENT:**

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:30PM.

BY: \_\_\_\_\_  
Mayor Patrick Reilly, Council Chair

ATTEST:

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

Date Approved: 4/16/2018

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES**  
**MARCH 19, 2018                      7:30 PM**

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

**A.     CALL TO ORDER:**

Council Chair, Mayor Patrick Reilly called the meeting to order at 7:30 pm. CM Danny White 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

DANNY WHITE

TOWN ADMINISTRATOR:

DOUGLAS HOYT

TOWN ATTORNEY:

KARL BOHNE

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

For the record, Malabar Fire Chief Mike Foley is not present.

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

Chair asked if there were any: CM Mahoney asked to remove #3, as P&Z did not review the final version. Chair explained that the P&Z Board presented their recommendations and then the Attorney was directed to review based on Supreme Court ruling that sign regulations can't be based on content. It is now before Council for first reading. Attorney stated Chair is correct.

CM Mahoney also asked to remove #4 as regulations for pharmacies should also go to PZ Board first. Attorney asked Franklin. Franklin said Attorney was directed at last meeting to revise adopted regulations to add pharmacy; it was not directed to go to P&Z Board. Attorney said on consideration, it should go to P&Z before first reading at Council as it is an amendment. Chair asked for Vote: All Ayes to send Ord 2018-03 to P&Z Board.

**D.     CONSENT AGENDA:**

**1.    Regular Town Council Meeting Minutes 3/05/18**

**Exhibit:**                      Agenda Report No. 1

**Recommendation:**        Request Approval

**MOTION:** CM Rivet / CM Ball to approve the 3/19/18 minutes as presented.

Discussion: CM Mahoney stated the corrections made to the minutes should be made in the actual date of minutes being corrected. Or a 2<sup>nd</sup> option would be a "notice" that corrections will be in the next meeting's minutes. Mayor addressed how the minutes are approved as presented or as corrected. If corrections are made during the approval process, the corrections are made before the Mayor signs and then those signed minutes are uploaded to the website. CM Mahoney said the changes aren't on the website.

Chair asked if there were any changes.

**Vote:** Ayes, 5; Nay, 0.

Mayor acknowledged the Gopher Turtle Proclamation naming April 10, 2018 as the day.

**E.     ATTORNEY REPORT: nothing**

**I.     STAFF REPORTS:**

**ADMINISTRATOR:** PW continues to work on stormwater project at the west end of Hall Road and is digging and recontouring the ditches. During this project the main cylinder on Gradall



broke and they have rented a rubber tired track hoe to continue the project during this period. The cost is \$3,200/month. The failed piece of equipment is from 2002.

TA continued that Engineer Morris Smith finished the drawings for the Atz Road piping project with catch basins. The Eva Lane hard surfacing project started last week. The base material has been put on and it looks good. The excavated material was placed on Quarterman Lane which he will discuss later in the agenda. CM Mahoney asked what owner wanted to pipe the ditch – Billie and Atz.

CM Mahoney said the Beekeeper Road issue with owner Stewart has progressed to placing building structures on the property and people say it is an eyesore and that it is now looking like a third world country. She asked if TA needed Council assistance to deal with the issue. TA said the property owner is within his rights to do that under the right to farm act and the Attorney has been involved. She said she would let the people behind Mr. Stewart know.

CM Mahoney asked about Jordan Boulevard railroad expenses verses the financial benefits to the Town. The paying of the maintenance bill was a big fiscal mistake since the beginning. TA asked if she was suggesting closing Jordan Boulevard and she said possibly. She mentioned some TPO money that is available for smaller projects. Town should be proactive in finding a solution. She referenced the trail that Drew had presented for T&G Committee to Council for trail users to gain access to the Jordan Scrub from Marie Street and Atz Road going down to Valkaria. She is not saying to do it immediately but perhaps the Town could look to improve that to provide access. Or have a road come up from Valkaria Road. She said Harris should be made to see that they are costing the Town a lot of money. Either make them pay for the new road or pay for the maintenance.

Mayor then asked how much Harris pays in ad valorem taxes to the Town – Franklin said she prepared list going into the 17/18 budget workshops and the amount paid previously by them was over \$15,000.00 (Note: actual amount was \$18,693.20). Plus, Data Management pays about \$5,000.00. CM Rivet said they are both providing much needed tax revenue and they did nothing to prevent the Industrial Park from being developed. TA said the State did that as part of the push to buy large parcels for conservation, in disregard to the Town's Comprehensive Land Use Map/Plan.

CM White asked how much the maintenance is? Franklin the FEC submits the maintenance bill every seven years; it has been a low as 38K and most recently 97K. CM White said it is a known expenditure that occurs every seven years and that they should budget for it.

**FIRE CHIEF:** Deputy Chief Joe Giantonio made report as he is filling in for Chief Foley. Response time is down to 5 minutes. Active members of 30 plus ten paid. He then went over report. (attached)

CM Mahoney asked him if Council can we get a "pro / con" report from Chief on cancelling the new fire truck purchase. Deputy said the con is the equipment is old and failing. The pro is that you are going to have a nice new truck to provide fire services. CM Mahoney said the Brush Truck is new – Deputy said it was built in house.

**CLERK:** Nothing

**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.**

Speaker Card: Skip Hard read from paper stating that on 3/5/17 CM Korn used bullying tactics against a fellow council member. He then referenced the code of conduct for Board



member, Ord 2017-07 that imposes no penalties, so it should be repealed. (Mr. Hard requested his handout be attached to the minutes for the record). CM Mahoney questioned the need for the ordinance and suggested it should be removed.

CM White clarified that the attachment should reference the 3/5/2018 minutes; not the 2017. Mr. Hard agreed. Franklin corrected the date on his submitted statement.

**K. PUBLIC HEARINGS/SPECIAL ORDERS: 1**

**2. Building Codes Adopted (Ord 2018-01)**

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

**Exhibit:** Agenda Report 2

**Recommendation:** Request Adoption Ord 2018-01

Ordinance read by title only.

**PH opened:** none

**PH closed:**

Atty said this is housekeeping and is done regularly.

**MOTION:** CM Rivet / CM White to adopt Ord 2018-01.

Discussion: housekeeping item.

**ROLLCALL Vote:** CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM White, Aye. Motion Carried 5 to 0.

**L. UNFINISHED BUSINESS/GENERAL ORDERS**

**ORDINANCES FOR FIRST READING: 2-1 (one was pulled)**

**3. Sign Code Update (Ord 2018-02) 1st Reading**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE TOWN; AMENDING ARTICLE XIX; AMENDING DEFINITIONS; AMENDING SECTIONS RELATING TO EXEMPTIONS; PROVIDING FOR REGULATIONS OF TEMPORARY SIGNS; PROVIDING FOR PROHIBITED SIGNS AND EXCEPTIONS; PROVIDING FOR SIGN REGULATIONS FOR ALL ZONING DISTRICTS; PROVIDING FOR SIGNS EXEMPT FROM PERMITTING; PROVIDING FOR PROHIBITED SIGNS AND EXEMPTIONS; PROVIDING FOR ADMINISTRATION, ANNUAL LICENSE; PROVIDING FOR APPEALS AND VARIANCE; PROVIDING FOR REGULATIONS OF NONCONFORMING SIGNS; PROVIDING REGULATIONS CONCERNING HAZARDOUS SIGNS; PROVIDING FOR PERMIT, CERTIFICATE AND LICENSE FEES; PROVIDING FOR GENERAL SIGN REGULATIONS; AMENDING TABLE 1-19.18; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

**Exhibit:** Agenda Report No. 3

**Recommendation:** Approval of 1<sup>st</sup> Reading of Ord 2018-02

Ordinance read by title.

Speaker Card: Liz Ritter – When the PZ Board did their recommendation to Council the Attorney said they did a good job. They ask for the final clean code for months and never got a clean copy. Still haven't received a clean copy; Council doesn't even have a clean copy. She asked if this is the way it is going to be codified. She then questioned the licensing and permitting fees. Said she asked about why the Town didn't continue to regulate the annual fees for signs and never got a response. She then asked if maintenance would require a permit.



Franklin stated that for the record she never got a request from any member of the P&Z Board or the Secretary for a "clean" copy of the ordinance. Mrs. Ritter said it was in their minutes.

Mrs. Ritter said they put all the time into it and never got a clean copy. Whole sections have been deleted. If you don't want the opinion of the Board that is their prerogative

**MOTION: CM Rivet / CM White to approve Ord 2018-02 on 1<sup>st</sup> Reading.**

Discussion:

CM Mahoney said the P&Z Board asked for a complete clean copy and why no fees have been collected and never got a response. They spent months on this – it wasn't taken lightly. CM Mahoney realizes the Attorney was protecting Town with this language.

Mayor also spent a lot of time on it. Atty said we have to add all this extra language into the code. Mayor said the Attorney did say the Board did a good job – but it wasn't the legal review. CM Mahoney asked if they had to add fees. They added fees for other types of things.

CM Korn said they pride themselves with being rural community and to do that they need to encourage business development on the main corridors; that is what this Council stated. If we have excessive sign ordinances we will discourage businesses. From his own sign examples at his house, those signs would have to come down. Be rural and let's not get over encumbered with regulations.

CM Ball said it is very lengthy. He sees a lot of signage on Malabar Road. A lot of it would not be allowed with this ordinance. How do we administer it? Do we have the infrastructure to administer it?

Atty said we don't do proactive code enforcement. Bad facts make bad law. Town of Gilbert in PA was sued because they gave someone a hard time over a directional sign. That went to the Supreme court. For instance - can't define a sign as "political" or "for sale" – that would be unconstitutional and cannot be enforced.

In going through the Ord after P&Z he had to eliminate content based signage. He said he just put numbers in there and there are still blanks that need to be completed. He wouldn't waste your money but this has to be amended to protect the Town. CM White asked if there was a deadline to get this done. No. CM White said send it back to P&Z as a clean copy and ask them to review it and submit their recommendation. Atty said signs by their very nature are content based.

Atty said they may want to dumb it down. CM Ball raised good point – making it simpler. Atty said there should be permit fees. Franklin clarified that the building permit fees have been and continue to be collected for signage permits. The Attorney is referring to an annual sign fee. That collection process was stopped in 2002 and would have to be completed restarted from the ground up. There is nothing that can be reactivated. Physical inventory of signs would be required and there is no staff to do that function.

CM Korn said when he had a shop in Palm Bay he had to pay an annual sign fee for the sign he had in the window. Make this Town people friendly and business friendly.

Mayor said his concern is if the ordinance is dumbed down to the point that it defeats the Supreme Court ruling. CM Ball asked how do we go too far if it is content neutral?

CM Mahoney said 25/yr fee per sign every time they put a new sign out. The P&Z Board has several business owners on the Board and feels they will be fair.



**MOTION:** CM Mahoney / CM Rivet to table and send to P&Z Board. Vote: All Ayes.  
Franklin will send clean copy to Board.

Pulled to send to P&Z first.

**4. ~~Pharmacy and Medical Marijuana Dispensary Regulations (Ord 2018-03) 1st Reading~~**

**RESOLUTIONS: 0**

**MISCELLANEOUS: 1**

**5. Allocate Road Materials (acct 541.4610) funds to Complete Quarterman Lane Improvements of the Approved Portion of Road**

**Exhibit:** Agenda Report 5

**Recommendation:** Council Approval

We have vibratory roller and extra roller. Need another 15K to bring it up to spec again.

**MOTION:** CM White / CM Rivet to approve this allocation from the approved budget line item.  
Discussion: CM Mahoney said so the 15K is not what was reported in in package. Franklin stated the agenda report listed the approved budget amount and the current estimate of the remainder of that line item – not the estimated cost.

TA said the road was approved for a length of 1,895 feet that they are referring to in this request. There is another 400 feet beyond that that is not approved and would require much more money to deal with the wetlands.

CM Rivet asked if the crushed concrete would be a lower dust creator than the other material. CM Ball asked about crushed concrete they discussed at a recent meeting and if there would be the same potential for metal to be found in the material. TA said they are not buying from that vendor again that had all the metal. Ceased using him years ago.

CM White asked if there are other materials that are less likely to be so dusty. CM Korn said shell is good but very expensive and hard to get it. TA said they can wet it down and roll it in as part of the process to reduce dust but not eliminate it. There are products that can be sprayed on but are very expensive and only last for one or two years.

**Vote:** All Ayes.

**M. DISCUSSION/POSSIBLE ACTION:**

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

**O. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Ball: Suggested starting the budget workshops earlier this year. Franklin said they start in July and continue into September. Chair said that could be done. CM Ball said the process seemed to sneak up on them last year.

CM Mahoney: (report attached) Thanked public for their input. They can use public input by asking Clerk about the Budget to Actual and having it explained. Also asked at the last meeting for a PW report on what had been completed. CM Korn asked how the farmer market went. Excellent. Every 3<sup>rd</sup> Sat.

CM Rivet: Nothing

CM Korn: Website is very informative. The speed on Weber Road is 35 mph. Asked TA to increase BCSO patrolling. Too many families along there. Another concern is on Next Door. Some postings of issues with WM and their PR release that they would not be picking up any construction debris due to Hurricane Irma last September after the end of March. If you are



having a rebuilding project because of hurricane damage it is the contractor's responsibility. If you have other special pick up requests call WM and they will make arrangements.

CM White: Looked at all the other cities websites and did not see any that put their quarterly financial reports on their websites.

Mayor: thanked everyone for the SCLC Dinner Mtg last week. He also wanted to thank Debby and Rebekah of Grant Valkaria for their efforts in its success.

**P. ANNOUNCEMENTS:**

**Q. ADJOURNMENT:**

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:30PM.

BY: \_\_\_\_\_  
Mayor Patrick Reilly, Council Chair

ATTEST:

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

Date Approved: 4/16/2018

DRAFT Regular version REGULAR



## Attachments for the RTCM 03/19/2018

- Fire Dept Feb Report – 2 pgs
- Speaker submittal under Public – 5 pgs  
(Note: he spoke of Ord 2017-06 but handed in Ord 2017-07)
- CM Mahoney Report – 3 pgs







**Town of Malabar  
Fire Department Status (February 2018)**

Item	Vehicle ID #	County # (Fire-1)	Mileage /	Engine hours /	maintenance done	Status
1	Chief's Car 2015 Chevy pick up				PM Completed	Operational
2	Utility 99 Izuzu Trooper		102870		Pm Completed	Operational
3	Engine-1 1997 Eone		No reading	4833.3	pump on truck leaks Possible rebuild/replace	Operational
4	Engine-2 1990 Eone	(Eng-299)	11297	1398.6	Some emergency lights not working, failed pump test	Operational
5	Ladder-1 1993 Sutphen	(L-99)	102856.2	12590.2	failed fuel line replaced -Failed pump test	OOS
6	Squad-1 2007 Ford F550	(SQ-99)	41572	26235		Operational
7	Tanker-1 2006 Freightliner	(Tanker-99)	13355.9	227.8		Operational
8	Brush-1 2004 Ford F550	(B-99)	9812.3	945.4		Operational
9	Brush-3 1991 Military	(B-399)	113897	4557		Operational
10	Brush/Tanker-4 1977 Military	(B/T-499)	92415.3	580.5		Operational
<b>General Comments/Special Tasks</b>						
1	ladder 99 not in service pump wont hold prime do to pump pakings will not pas pump test at this time					out of servise
2	Progression on inventory list					
3	fire one class will be starting in next mounth					
4	Forresty 50/50 grant for gear is reapplied for					
5	ISO AUDIT completed and our status is 4/10					
6	E99 having pump problems we are looking into ways to fix.					
7	NEW BRUSH TRUCK, is in service					
8	Hydrant testing is currently taking place					
9	Applied for grant to replace SCBAs. We have 7yrs left					
10	State Fire Marshall saftey held and 100% compliant					

**Skip Hard**

Public -  
3/19/18  
5 pp  
(pages)

**Subject:** Korn's Lie

During the RTCM of March 5<sup>th</sup>, 2017, Councilmember Korn used bullying and cowardly tactics to intimidate fellow Councilmember Laura Mahoney, by repeatedly saying that she had lied on her election financial statement.

Quoting Councilman Korn, "Two years ago you filed a lie for your financial statement saying that you didn't spend a dime. That was the statement you turned in. I got that from the state too."

Our Town Ordinance 2017-07, section 2 Code of Conduct, subsection d, states, "I will demonstrate dignity, respect, and courtesy toward those whom I am in contact with in my capacity as an appointed Board or Committee Member. I will refrain from intimidation and ridicule of fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of the Town, members of the public, vendors of the town and those conducting business with the Town.

Since our Ordinance 2017-07 imposes NO PENALTIES for non-compliance, it is effectively USELESS to control the actions of Councilmember Korn, and therefore should be repealed.

Councilmember Korn's comments were cowardly. He knew he was protected from a lawsuit for his slanderous statements because he was a sitting member of our Town Council during a town Council meeting. OUTRAGEOUS!

Meanwhile, Councilmember Laura Mahoney continues serving OUR town, while dealing with this HOSTILE WORK ENVIRONMENT.

Mr. Korn, you will be held accountable.

Accountability and Transparency

William H. (Skip) Hard, Jr.

Plus Ord 2017-07



ORDINANCE 2017-07

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING DIVISION 1 OF ARTICLE VIII OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE CREATION OF A NEW SECTION 2-216; PROVIDING FOR DEFINITIONS; PROVIDING FOR A BOARD AND COMMITTEE CODE OF CONDUCT AND PENALTIES FOR VIOLATION; PROVIDING FOR REPEAL AND CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND AN EFFECTIVE DATE.

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

**SECTION 1.** Division 1 of Article VIII of Chapter 2 of the Code of Ordinances of the Town is amended by adding a new Section 2-216 to read as follows:

**Sec. 2.-216. Town Board and Committee Code of Conduct.**

"In addition to adhering to the requirements of state law, all current and future councilmembers shall commit to the following code of conduct by written affirmation, which shall remain on file with the Town Clerk, as follows:

**1. Definitions:** For purposes of this section the following definitions shall apply:

-Town Council shall mean collectively the 5 elected councilmembers and the office of the Mayor, *See Town Charter 2.02.*

-Town Administrator shall mean the Town Administrator, or designee, of the Town of Malabar. *See Section 2-300 (c) of the Code of Ordinances of the town*

-Town or town shall mean the Town of Malabar

-Board or Committee shall mean any public body established by the Town Council, including but not limited to Planning and Zoning Board, Board of Adjustments, Parks and Recreation Board, and Trails and Greenways Committee.

**2. Code of Conduct**

(a) I affirm that the proper Statutory and Town Charter role of Members of appointed Town Boards or Committees, as with any Member of an appointed government body, is to act collectively, not individually, to apply the Town's governing policies, and that the Town Administrator and Staff administer such policies.

(b) I understand that an appointed Board or Committee Member does not manage the affairs of the Town. I will not intrude into daily operations or spheres of responsibility designated by Florida Statutes, Town Code, and Town Charter to the Town Administrator; or undermine the Town Administrator's lawful authority. Further, I understand that the Town Administrator is responsible for administering the policy direction established by a majority vote of the Town Council and not the individual wishes of Board or Committee Members. *See Article IX, Chapter 2 of the Code of Ordinances of the Town.*

- (c) I will represent the interests of the entire Town when making decisions and will rely upon available facts and my independent judgment. In my capacity as an appointed Board or Committee Member, I will avoid conflicts of interest and avoid using my official position for personal, professional, or partisan gain.
- (d) I will demonstrate dignity, respect, and courtesy toward those whom I am in contact with in my capacity as an appointed Board or Committee Member. I will refrain from intimidation and ridicule of fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of the Town, members of the public, vendors of the town and those conducting business with the Town.
- (e) In my capacity as an appointed Board or Committee Member, I will refrain from inappropriate language including statements that are malicious, threatening, slanderous, disparaging, mean-spirited, vulgar or abusive. All disagreements, concerns or criticisms shall be framed in language that is in keeping with the dignity and professionalism of an appointed official and the honor of my respective Town Board or Committee.
- (f) I will focus on solving problems. I will maintain appropriate decorum and professional demeanor in the conduct of Town business and work cooperatively and conscientiously with others as I request or receive information, examine data or weigh alternatives in the decision-making process.
- (g) I will demonstrate patience and refrain from demanding, interruptive access to Staff or immediate responses or services when requesting information that requires significant Staff time in research, preparation or analysis or that will result in Staff neglect of urgent duties. Such requests will be made through the Town Administrator for scheduling and prioritizing through consensus of my respective Town Board or Committee.
- (h) I will devote adequate time for preparation prior to my respective Town Board or Committee meetings and as much as possible, I will be in attendance at such meetings and all other scheduled events where my participation is required.
- (i) I will respect diversity and encourage the open expression of divergent ideas and opinions from fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of the Town, members of the public, vendors of the town and those conducting business with the Town.
- (j) I will listen actively and objectively to others' concerns or constructive criticisms.
- (k) I will refrain from any individual action that could compromise lawfully authorized decisions of the Town or the integrity of the Town and my fellow Board or Committee Members. I will delineate clearly for any audience whether I am acting or speaking as an individual citizen or in my capacity as a Town Board or Committee Member.
- (l) I will maintain in confidence any privileged or confidential information, as provided by law, provided to me by the town and will not disclose such information publicly or to any person who has not been duly authorized by the town to receive such information, unless such disclosure is duly authorized by the Town Council or required by law.



In addition, I will refrain from copying any written privileged or confidential documents provided to me by the town and will keep such documents in safekeeping. Further, upon leaving office or upon request by the Town Council, I will return to the town any privileged or confidential documents or materials or town property provided to me by the town while serving on the town council.

(m) I will abide by all laws of the state applicable to my conduct as a member of the Town Council, including, but not limited to, the Government in the Sunshine Law, the Florida Public Records Law, the Florida Code of Ethics for Public Officers, and town rules of procedure and codes of conduct.

(n) I will promote constructive relations in a positive climate with all Members of the Town Council, Town employees, Town Attorney, and Town contractors and consultants consistent with my role as a Board or Committee Member, as a means to enhance the productivity and morale of the Town. I will support the Town Administrator's decision to employ the most qualified persons for Staff positions. I will recognize the bona fide achievements of the Town Council, Town Administrator, Staff, Town Attorney, Town contractors and consultants, business partners, and others sharing in, and striving to achieve, the Town's mission.

(o) I will enhance my knowledge and ability to contribute value to the Town as a Board or Committee Member by keeping abreast of issues and trends that could affect the Town through reading, continuing education and training. I will study policies and issues affecting the Town, and will attend training programs if required by the Town. My continuing goal will be to improve my performance as a Board or Committee Member.

(p) I will value and assist my fellow Board or Committee Members by exchanging ideas, concerns, and knowledge through lawful means of communication. I will help build positive community support for the Town's mission and the policies established by the Town Council.

(q) I will support and advocate for my beliefs, but will remain open to understanding the views of others. I recognize that I share in the responsibility for all Town decisions that my respective Board makes and will accept the will of the majority.

(r) I will always hold the best interests of the citizens of the Town and the public health, safety and welfare of the community in the highest regard. I will seek to provide appropriate leadership that nurtures and motivates Town citizens to be stakeholders in the affairs and achievements of the Town.

(s) I will be accountable to the Town Council for violations of this Code of Conduct.

**3. Penalties for Violation of Code of Conduct.** As is allowed by law and the Town's Charter and code of ordinances, the Town Council reserves the right to impose any penalty for a violation of this Board and Committee Code of Conduct, including removal as allowed by and in accordance with the procedures of law."

**SECTION 2. CONFLICT.** All ordinances or resolutions or part of ordinances or resolutions in conflict herewith are hereby repealed.

**SECTION 3. SEVERABILITY.** If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise to be invalid, unlawful, or unconstitutional.

**SECTION 4. CODIFICATION.** It is the intention of the Town Council of the Town of Malabar, Brevard County, that the provisions of Section 1 of this Ordinance become part of the Code of Ordinances of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of Section 1 of this ordinance to be incorporated into the Code of Ordinances.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon passage and adoption.

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

- Council Member Grant Ball
- Council Member Laura Mahoney
- Council Member Steve Rivet
- Council Member Dick Korn
- Council Member Richard Kohler

NAU  
NAU  
SUE  
SUE  
SUE

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 21 day of AUGUST, 2017.



By: TOWN OF MALABAR  
Patrick T. Reilly  
 Mayor Patrick T. Reilly  
 Council Chair

1<sup>st</sup> Reading: 8/7/17 3 to 2

2<sup>nd</sup> Reading: 8/21/17 3 to 2

ATTEST:

Debby K. Franklin

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

Approved for Legal Sufficiency

Karl Bohne, Jr.  
 Karl Bohne, Jr.  
 Town Attorney



**C. Approval of Agenda –**

Pg 1

> **Remove #3 Sign Code Update (Ord 2018-02)** –Planning and Zoning did not receive finalized update. Let's not bypass our town's government system --Planning and Zoning Board.

> **Remove #4 Pharmacies (Ord 2018-03)** needs to go back to Planning and Zoning as Pharmacies are not approved in our Town Code as of yet and must not bypass our town's government system specifically our Planning and Zoning Board.

**D. Consent Agenda**

**Minutes:**

My request would be all corrections be listed within the actual date of the minutes being corrected.

Possible second option would be a "notice" that corrections would be in the next Council meeting minutes.

**I. Staff Reports:**

**Administrator:**

BeeKeeper Lane's owner Stewart has apparently moved past the initial dirt projects that I pointed out to you in November to structures appearing like a third world country. Some people have said it is becoming an eye soar. Do you need Council's help to direct some sort of action?

Railroad Crossing expenses vs. business's financial benefits to the taxpayers. Possibly look into other alternatives. I have learned there are TPO moneys available for some smaller projects. Maybe we could look to our future combining a road out with the Trails and Greenways system. Let's be proactive in finding a solution. This was a big fiscal mistake in the first place.

**Fire Chief:** Could we get a possible pro/con report on cancelling our fire truck purchase agreement, including financials? Thank you

#### H. Public Hearings/Special Orders: 1

##### 2. Building Codes Updated (Ord 2018-01) 2<sup>nd</sup> Reading

-Last meeting Attorney directed we need to adopt due to state and county updates and amendments –yearly housekeeping item.

I approve

##### 3. Sign Code Update (Ord 2018-02) 1<sup>st</sup> reading

> Planning and Zoning asked for completed amended code to review and had not received as of last P&Z meeting

> No fees approved by P&Z- We must not ignore our governmental process.

> We should wait for the P&Z Board to review.

##### 4. Pharmacy and Medical Marijuana Dispensary Regulations (Ord 2018-03)

>If we do not remove this from Agenda, I'd suggest we do not allow. If there is a lot of public interest to change our Code, put on this year's ballot.

>Let's not be hasty in making changes to our Town's Code and tables.

> I'd like to state for the record, my opinion has nothing to do with being for or against medical marijuana- this is **NOT** the issue.

##### *Last week's concerns:*

*(Pg. 2 "a municipality that choose to allow them cannot limit the number of dispensaries within their boundaries."*

>We need to be sure to protect our town charter and rural nature.

>Does our existing Code provide needed protection for property owner's rural nature? )



**Miscellaneous: 1**

**5. Allocate Road Materials funds to complete Quarterman Lane Improvements of the Approved Portion of Road.**

**L. Reports:**

**District 2:**

I'd like to thank the public for your involvement. I'd encourage the public to start getting involved in the budgeting process at this time. Ask for the quarterly actual reports from Debby and discuss them with her. We could use public input during both our auditing and budgeting processes.

Also a reminder:

*From last Council meeting:*

*Public Works,*

*The public would be pleased to have a report such as work completed for the month. The taxpayers should be informed.*

*I'd like to add this to the next RTCM agenda, March 19<sup>th</sup>.*

Thank you!!!

Laura

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2  
Meeting Date: April 16, 2018**

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

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**SUBJECT: Creating a Special Assessment to Pave Smith Lane (Reso 01-2018)**

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**BACKGROUND/HISTORY:**

The residents on Smith Lane, south of Atz Road for just under one half mile have petitioned the Town to do a special assessment to have the approved portion of Smith Lane, south of Atz Road paved.

The petitions were followed up with acquiring density tests and reviewing the approved construction drawings and acquiring estimates from vendors on asphalt costs.

Of the 17 letters mailed out, we received 12 affirmative, 4 declined and one no-response.

The 12 affirmative letters consist of more than 2/3 of the linear front footage of the affected areas. Per the process outlined in F.S. 170 and our Attorney's guidance, we drafted this resolution. Upon its adoption it will be legally advertised and the assessment map will be created. The assessment roll will be created and advertised indicating the special assessment amount and whether it will be paid over one or two years. The assessment notices will then be mailed out.

The majority (10 of the 12) of the affirmative have committed to a one-time payment. The other two have requested payment over two-years as provided in Resolution 15-2012. Those two properties and the five (5) other affected property owners will have liens placed on their properties until the assessment is paid in full.

**FINANCIAL IMPACT:**

Revenue from Special Assessment will pay for this improvement at 100% with no cost burden to the Town.

**ATTACHMENTS:**

Resolution 01-2018

Malabar Code, Chapter 13, Section 13-52

Reso 15-2012

Sample of Letter that was mailed after petitions were received

**ACTION OPTIONS:**

- Adopt Resolution 01-2018



## RESOLUTION 01-2018

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AUTHORIZING, DECLARING AND CREATING A SPECIAL ASSESSMENT FOR THE HARD SURFACING OF SMITH LANE, SOUTH OF ATZ ROAD FOR A DISTANCE OF 2,224 FEET; PROVIDING FOR THE ESTIMATE OF TOTAL COSTS OF SAID IMPROVEMENTS; DESIGNATING THE PORTION OF THE IMPROVEMENT TO BE PAID BY SPECIAL ASSESSMENT; DESIGNATING WHEN THE SPECIAL ASSESSMENT SHALL BE PAID; DESIGNATING THE LANDS UPON WHICH THE SPECIAL ASSESSMENT SHALL BE LEVIED; PROVIDING FOR AN ASSESSMENT PLAT AND THE CREATION OF A PRELIMINARY ASSESSMENT ROLL; PROVIDING FOR PUBLICATION AND NOTIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, The Town of Malabar is a Florida municipal corporation organized and existing under Florida law; and.

**WHEREAS**, the Town Council provided in Chapter 13, Section 13-52 the method to levy Special Assessment for paving or hard surfacing of approved dirt roads, and;

**WHEREAS**, The Town Council is the governing body of the Town and has authority pursuant to Chapter 170 of the Florida Statutes to declare a Special Assessment, and;

**WHEREAS**, Florida Statute 170.01(1) (b) authorizes the Town to impose a special assessment for "the construction, reconstruction, repair, paving, repaving, hard surfacing, rehard surfacing, widening...of streets..."; and

**WHEREAS**, the Town has received a Petition from the property owners on Smith Lane requesting paving of 2,224 feet of roadway, south of Atz Road in Township 29, Range 37 Section 12 of the Town; the road frontages for each property owner have been determined and noted on an Assessment map in accord with F.S. 170.02, density tests have been performed, estimates for paving received, 16 Notices sent out to the affected property owners with the cost estimate and 12 affirmative responses were received back that exceed the two-thirds of front footage, with a total estimated cost of \$70,666.67 and;

**WHEREAS**, The Town Council declares a special assessment for road surfacing of Smith Lane is necessary for the areas described herein.

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

**SECTION 1.** The above recitals are true and correct and are considered an integral part of this Resolution.

**SECTION 2.** The Town Council hereby declares that a special assessment is necessary for hard surfacing of that portion of Smith Lane shown on those certain plans located in the Smith Lane road file at Town Hall, and this Resolution shall be legally advertised in the Florida Today newspaper upon its adoption.

**SECTION 3.**

The Total road frontage affected in this Special Assessment is 4,316.84 linear feet and the total estimated maximum cost is \$69,847.31 as provided for in F.S. 170.03 and represents the full and complete costs associated with all aspects of this project. That portion of the improvement of Smith Lane to be paid by the special assessment is \$69,847.31. The manner upon which the special assessment is to be determined shall be based and prorated on the foot frontage of the respective properties benefited by the said improvement. The Town Council of the Town of Malabar, Brevard County, Florida, has also provided for extended payments over the course of two years in a previously adopted Resolution.

**SECTION 4.** The most common Special Assessment for a Property Owner with 200 feet of Smith Lane road frontage is estimated to not exceed \$3,236.00.

**SECTION 5.** The Complete Assessment List of all affected property owners and their assessments will be advertised as provided for in F.S. 170.07 indicating whether one or two years will be used for the installment payments of the assessments.

**SECTION 6.** The lands upon which the special assessment shall be levied are described as all lots and lands adjoining and contiguous or bounding and abutting upon such improvements or specially benefited thereby and further designated by the assessment plat hereafter provided for.

**SECTION 7.** An assessment plat showing the area to be assessed, with plans and specifications, and an estimate of the cost of the proposed improvement may be inspected at the Office of the Town Clerk, 2725 Malabar Road, Malabar, FL 32950.

**SECTION 8.** Upon the adoption of this Resolution the Town shall cause to be made a preliminary assessment roll in accordance with the method of assessment provided for herein, which assessment roll shall be completed as promptly as possible; said assessment roll shall show the lots and lands assessed and the amount of the benefit to and the assessment against each lot or parcel of land, and, if said assessment is to be paid in installments, the number of annual installments in which the assessment is divided shall also be entered and shown upon said assessment roll.

**SECTION 9.** Upon the adoption of this resolution the Town shall cause said resolution to be published one time in a newspaper of general circulation published in the Town.

**SECTION 10.** All resolutions or parts of resolutions in conflict herewith are hereby repealed.

**SECTION 11.**

This resolution shall take effect immediately upon its adoption.

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

Council Member Grant Ball	_____
Council Member Laura Mahoney	_____
Council Member Steve Rivet	_____



Council Member Dick Korn \_\_\_\_\_  
Council Member Danny White \_\_\_\_\_

**PASSED AND ADOPTED** by the Town Council, Town of Malabar, Brevard County, Florida this \_\_\_\_ day of \_\_\_\_\_, 2018.

**BY: TOWN OF MALABAR**

\_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved as to form and  
legal sufficiency by:

\_\_\_\_\_  
Karl W. Bohne, Jr.  
Town Attorney

# MALIBAR CODE

## STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

§ 13-52

owner may file with the town clerk a notice of assignment on a form approved by the town, which notice of assignment shall be recorded by the clerk in the official certified costs records, in which case the clerk shall pay such monies over to the assignee upon reimbursement as set forth hereinabove. Such assignee shall have the same obligation to keep the town clerk informed of any changes of address and the same procedure shall be utilized in the event that reimbursed monies are not deliverable to such assignee, after which time such monies shall be forfeited as described hereinabove. No assignment to such funds may be made to any individual other than a successor in interest to the real property that abuts such street upon which the improvement was made.

(Ord. No. 01-01, § 1-16, 2-5-01)

### Sec. 13-52. Levy of special assessments for street paving, construction or hard surfacing.

(1) Pursuant to F.S. Ch. 170, the town council may, from time to time, levy special assessments for paving, hard surfacing, and construction of streets, as well as other purposes permitted by F.S. Ch. 170. The town reserves the right to levy such special assessments from time to time.

(2) As an alternative to the provisions of subsection (1) above, upon petition signed by the owners of two-thirds (2/3) or greater of the front footage on any street or road requesting the town council to construct, pave, or hard surface such street or road, the town council of the town shall, upon a finding by the council that the petition is in sufficient form, substance and execution, direct town staff to determine the preliminary cost for such construction activity. Within thirty (30) days of notice sent to the owners, via regular mail to the address appearing on the petition, signing the petition of the preliminary determination of such construction cost an owner may notify the town of their desire to be excluded from the petition. If an owner timely requests they be excluded from the petition then their name shall not be considered as joining the petition.

- a. At the expiration of the thirty-day notice period above and if there are enough owners removed from the petition to drop below the two-third (2/3) threshold requirement the petition shall be deemed rejected and no further action shall be required.
- b. At the expiration of the thirty-day notice period above and if there are enough owners to meet the two-third (2/3) threshold requirement the town council may approve the construction and order a special assessment imposed in accordance with the procedures of F.S. Ch. 170. Notwithstanding any owner whose name is excluded from the petition, if the town council determines to approve the construction and the imposition of the special assessment for such construction, all owners of property benefited from the construction improvement shall be subject to the special assessment.

(3) The form of the petition provided for herein shall be supplied by the town.

(4) Provisions for the pay back of any special assessment imposed pursuant to this section shall be set forth in the resolution required by F.S. Ch. 170.

(Ord. No. 01-01, § 1-17, 2-5-01; Ord. No. 12-54, § 1, 7-16-12)

Reso 15-2012



**Sec. 13-53. Remedies.**

In addition to other remedies described in this division and those available at common law, which shall be cumulative herewith, the town council may proceed against any individual violating this division in law and in equity and may obtain from the court mandatory or prohibitive preliminary and permanent injunctive relief. In any action related to this division, in which the town is a party, the town, if it prevails, shall be entitled to recover its reasonable attorney's fees and suit costs, including those associated with any appellate or post-judgment proceedings.

(Ord. No. 01-01, § 1-18, 2-5-01)

**Sec. 13-54. Prospective application.**

This division shall have prospective application only, and no property owner who expended monies for the improvement of any road or right-of-way within the town prior to the effective date of this division [February 5, 2001] shall have any right or entitlement to reimbursement for such expenses by virtue of this division. The entirety of ordinance 91-2 and 95-5 of the Code of Ordinances of the Town of Malabar are repealed as of February 5, 2001. Ordinance 91-2 and 92-5 of the Code of Ordinances of the Town of Malabar shall; however, be applied to those road improvement projects that were begun during the effective dates of those respective ordinances.

(Ord. No. 01-01, § 1-19, 2-5-01; Ord. No. 09-28, § 1, 11-16-09)



RESOLUTION 15-2012

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR METHOD OF COLLECTING THE ASSESSMENT WHEN LOCAL STREETS ARE HARD SURFACED AT THE REQUEST OF PROPERTY OWNERS; PROVIDING FOR THE REPEAL OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the code provides for a method of petitioning Council to make certain road improvements to local streets and assess the property owners that benefits from such improvements; and

WHEREAS, the Council has determined that property owners with large amounts of frontage may require more time to pay the assessment and desire to provide a time frame for repayment; and

WHEREAS, after a review of the method used by other municipalities Malabar Town Council has determined that a assessment pay schedule spanning one to three (1 to 3) years is appropriate at this time.

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

SECTION 1. That the following assessment schedule is established and will be provided to property owners seeking to petition Council for road improvements, namely hard surfacing of dirt roads in the Town of Malabar.

Assessments of \$2,500.00 or less	1 year from assessment date.
Assessments of \$2,501.00 - \$6,000.00 ,	2 years from assessment date.
Assessments of \$6,001.00 - \$10,000.00.	3 years from assessment date.

The assessment amount is determined by adding all expenses related to the road improvement and dividing by the frontage improved. Once a per-foot cost is determined, then each property owner's assessment is determined and invoices will be sent out. Property owners will be provided one to three years to pay the assessment to the Town based on the above schedule. All such properties assessed will be subject to a lien to be recorded in the Public Records of Brevard County, Florida until the assessment is paid in full. Once the assessment is paid in full the lien will be satisfied by the Town.



**SECTION 2. Conflict.**

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

**SECTION 3. Effective Date**

This Resolution shall take effect immediately upon passage.

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

Council Member Carl Beatty	<u>Aye</u>
Council Member David White	<u>Excused</u>
Council Member Steve Rivet	<u>Aye</u>
Council Member Jeff McKnight	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Excused</u>

This Resolution was then declared to be duly passed and adopted this 2<sup>nd</sup> day of July, 2012.

TOWN OF MALABAR

By: Phillip R Crews  
Mayor Phillip R. Crews  
Council Chair

ATTEST:

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



Approved as to Form and Content:

Karl W. Bohne, Jr.  
Karl W. Bohne, Jr., Town Attorney



## Town of Malabar

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

Wednesday, January 17, 2018

Mr. & Mrs.

The Town understands that the residents on Smith Lane from Atz Rd. south wish to pave this roadway and will participate in these improvement costs through the leveeing of a "Special Assessment"

To accomplish this improvement property owners comprising two thirds of the road front footage must be in favor of the project.

Your not to exceed cost, for this valuable improvement is \$3,274.00 based on the front footage of your property.

This special assessment could be paid either by a one-time payment or spread out over two years.

Your signature below will denote your acceptance of this neighborhood improvement.

Douglas C. Hoyt  
Administrator  
Town of Malabar

I/We wish to participate.

I/We decline to participate

I/We support and accept the cost of \$3,274.00 associated with the paving of Smith Lane South and payment will be made by:  **onetime payment** or  **two-year assessment**, 8% per year interest accrues per year. Via Town of Malabar bill. (please mark your choice)

Accepted By \_\_\_\_\_ this date \_\_\_\_/\_\_\_\_/\_\_\_\_



# TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 3  
Meeting Date: April 16, 2018

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

**SUBJECT:** Possible sale of Huggins Park (continued from previous meeting)

---

## **BACKGROUND/HISTORY:**

At the 1/23/17 RTCM Council discussed the sale of Huggins Park. Later, during the Budget workshops last year, the Council discussed the option of selling Huggins Park, a neighborhood park developed by the Town in the 1980's and 1990's to serve the children in the Marie to Florence Street neighborhood. The land was originally donated to the Town by the County for development into a park. ***That is why it was zoned Institutional (INS)***. In the mid 2000's the park equipment was no longer safe and was removed. The gazebo was relocated to the Disc Golf Sanctuary across from the Fire Department.

The Comprehensive Plan's requirement of providing five (5) acres of recreation/open space per 1,000 residents is more than met by the Malabar Community Park and the Disc Golf Sanctuary.

The 4+ acres of (INS) property is surrounded on three sides by RS-10 Zoning for single family residential use and on the north by RR-65 which is being used currently for agricultural.

Selling it as INS would limit its use to community facilities as listed on the attached pages from Malabar Code which would not financially benefit the Town.

Placing conservation restrictions on the land would not financially benefit the Town. There is no information that staff can submit that would support the placing of a conservation easement on the land. ***Per the Brevard County Property Appraiser definition, property with a conservation easement in perpetuity could have a 100% tax exemption.***

Administratively rezoning it to RS-10 and selling it would make it compatible with the surrounding land and would put the property on the tax roll and allow some property tax revenue to be realized.

## **FINANCIAL IMPACT:**

Revenue from sale, annual ad valorem and reduced expenditures for maintenance.

## **ATTACHMENTS:**

Approved Council Minutes from 1/23/17 & 3/5/18  
Approved Council Minutes from 6/26/17 workshop indicating consensus to sell it.  
Pages 56 & 57 from Article II, Land Development Code  
Page 115 from Article III, Land Development  
Draft Ord from Atty Bohne as directed establishing conservation easement on land  
Information from Property Appraiser regarding tax exemptions for conservation land

## **ACTION OPTIONS:**

- Administratively rezone prior to bid as a condition of sale
- Motion to direct staff to go out for bid per procedures
- Place conservation easement on land and lease it

**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



media. She and Staff are here every day and are available to answer questions and explain but do not go out on social media to do so.

CM Mahoney said she has asked for things and it has been months before getting. She referenced the FallFest financials. Franklin said the event was in November and after all the expenditures were received and paid and reconciled the report was provided to Council in February. Malabar is very open to public requests and has always strived to be transparent in all activities. CM Mahoney said it should be posted for public.

**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.**

Speaker Card: John Contoupe – appreciates this time and resides in Malabar next to Huggins Park. The area has scrub jays and sand hill cranes. Two passions are children and animals and preservation of wildlife. Resided there for four plus years. It is a natural habitat to turkeys, turtles and provide nature. He read from a statement (attached) and identified as "J"

CM Korn has known about his dream for quite some time now. He knows the Town has determined that they maintain huge amounts of open space and this was a neighborhood park. The County gave it to the Town and the Town named it after early residents – the Huggins family. The playground equipment was removed years ago and selling it would eliminate one area of maintenance.

Mayor said it is not zoned for grazing animals or a petting zoo. It is zoned OI.

CM While – said Council will have to address the price. He asked Attorney about the possibility of restricting the land as part of the sale. Attorney said they can write deed restrictions and attached them to those parcels. Or you can create the same restrictions in an ordinance. Put on the second April meeting agenda for further information.

Speaker Card: Skip Hard, Hard Lane, read from a statement and submitted a packet with a request to make it part of the record. He asked that Mayor Reilly to apologize.

CM Korn asked to speak – he paid the fine. He stated that the complaint was filed by Bud Ryan and Skip Hard. It is petty and the election is over. CM Mahoney and CM Korn exchanged comments.

- K. PUBLIC HEARINGS/SPECIAL ORDERS: 0
- L. UNFINISHED BUSINESS/GENERAL ORDERS  
ORDINANCES FOR FIRST READING: 1;  
2. Building Codes Adopted (Ord 2018-01)

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

**Exhibit:** Agenda Report 2

**Recommendation:** Request Approval of 1<sup>st</sup> reading of Ord 2018-01

Ordinance read by title only.

**MOTION:** CM Mahoney / CM Korn to approve Ord 2018-01 on 1<sup>st</sup> Reading.

Discussion: housekeeping item.



**MALABAR COUNCIL WORKSHOP MEETING**  
June 26, 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. Prayer & Pledge were said by Council Chair, Mayor Patrick T. Reilly.

**B. COUNCIL:**

COUNCIL CHAIR:

MAYOR PATRICK T. REILLY

VICE-CHAIR:

STEVE RIVET, excused

COUNCIL MEMBERS:

GRANT BALL

LAURA MAHONEY

DICK KORN

RICHARD KOHLER

DOUG HOYT, excused

DEBBY FRANKLIN

ADMINISTRATOR

CLERK/TREASURER:

**C. WORKSHOP ACTION: DISCUSSION ON CIP – prior to budget workshops**

Chair recapped the last meeting. He suggested they go through the 5-year worksheet first and then realign the 1-5 year priorities. Chair directed Clerk to start correct the 5-year schedule to start with 2017 being "year 1" and going through 2021 as "year 5" – Council updated the 5-yr plan and the CIP. Slope mower – CM Ball asked about bid – yes it was still a piggy back on Sheriff's bid but was able to shave off another 2300 dollars. CM Ball said the majority of people that are satisfied are silent. There will always be a few that don't want to spend anything.

CM Korn said Council should be very careful that people know exactly what the tax dollars are covering and what they are not. CM Kohler said that goes back to the silent majority. CM Ball if the majority want something then go for it. If the majority don't want to raise taxes. You only hear from the people that have an axe to grind. CM Korn as a municipality we have made a promise to the people of Malabar to provide for health, safety and welfare and those necessary municipal provisions have a cost and the citizens need to understand that cost.

Brian Vail from audience said we should have some consideration with SJRWMD to get mitigation consideration for Marie Street improvement to Atz Road. Because we have so much conservation land already. Micro-surfacing hasn't held up. Tar and sand together and sprayed it. Don't do that again. CM Ball will see if it made any difference when the road needs redoing and GV is still in good shape. CM Korn said the soccer field will start to look better now.

→ Mayor brought up Huggins Park. Yes, there was Council consensus to sell it.

Re-paving of Corey and Weber will need to be done within the next 5-years. Brian said if they are not fixed now then they will be much more expensive later.

Mayor said also need to look at all the roads that we have accepted. Mayor has driven lots of the roads. Rocky Point Road is in bad shape. See cracks and separation. Town is responsible – need to have a plan to repair. Homework – drive the roads.

Chair Reilly, without objection, adjourned the meeting at 8:55 pm.

BY: \_\_\_\_\_

*Patrick T. Reilly*  
\_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

ATTEST:

*Debbie Franklin*  
\_\_\_\_\_  
Debbie Franklin, C.M.C.  
Town Clerk/Treasurer

Approved: 7/3/17



**Section 1-2.6. Land use classifications.**

The purpose of these provisions is to classify uses into specially defined types on the basis of common functional characteristics and land use compatibility. These provisions apply throughout the zoning regulations.

All land use activities are classified into the following activity types.

A. *Residential Activities.*

1. Single Family Dwellings.
2. Two Family Dwellings.
3. Multi Family Dwellings.
4. Mobile Homes.
5. Accessory Residential Activities.

B. *Community Facilities.*

1. *Administrative Services (Public or Private Not-for-Profit).* Activities typically performed by not-for-profit private or public social services and utility administrative offices.
2. *Cemetery.* Property used for the interring of the dead.
3. *Child Care Services.* Activities typically performed by an agency, organization or individual providing day care without living accommodations for preteens not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.
4. *Clubs and Lodges (Not-for-Profit).* Activities typically performed by a group of persons for social or recreational purposes not operated for profit and not including activities which primarily render services which are customarily carried on as a business for profit.
5. *Cultural or Civic Activities.* Activities typically performed by public or private not-for-profit private entities for the promotion of a common cultural or civic objective such as literature, science, music, drama, art or similar objectives.
6. *Educational Institutions.* A place for systematic instruction with a curriculum the same as customarily provided in a public school or college. These activities include nursery school and kindergarten facilities designed to provide a systematic program to meet organized training requirements.
7. *Golf Course and Support Facilities.* A golf course is comprised of at least nine separate holes and may be regulation length, executive length, or par three (3) length. A golf course shall be required to comply with recommended minimum design standards established by the U.S. Golf Association or the American Society of Golf Course Architects. The following acreage requirements shall be the minimum standards for a golf course:

<i>Type of Golf Course</i>	<i>Minimum Acres Required</i>
Regulation Course	120 acres
Executive Course	40 acres
Par 3 Course	35 acres

Commercial miniature golf courses and driving ranges and similar facilities are excluded from this activity as defined.

8. *Places of Worship.* Activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.
9. *Protective Services.* Fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.
10. *Public Health Facilities.* The Town has labeled the facilities below as Public Health Facilities. These facilities are also referenced in Florida Statutes, Title XXIX, in Chapters 395 and 408.

Notwithstanding the identification of other facilities in Florida Statutes, Title XXIX, in Chapters 395 and 408, the facilities below are the only Public Health Facilities provided for by the Town.

A. Hospital and other Licensed Facilities

"Hospital and other Licensed Facilities" means any establishment that:

- (a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
- (b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent.

However, the provisions of this chapter do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. For purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992. Refer to Chapters 395 and 408.

B. Nursing Homes and Related Health Care Facilities

Refer to Chapters 400 and 408 for the definitions and requirements of the following



- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses (except those Community Facilities defined as Nursing Homes and Related Health Care Facilities in 1-2.6.B.10(B)), general retail sales and services, warehousing, and outside storage; and
- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.
- A Malabar Vernacular Style is required for all development along arterial roadways.

- J. *INS "Institutional Services."* The INS district is established to implement comprehensive plan policies for managing institutional development. The district is intended to accommodate public and semi-public facilities such as government administration buildings; fire, police, and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this district.
- K. *CL "Commercial Limited."* The CL district is established to implement comprehensive plan policies for managing limited commercial development accessible to major thoroughfares near residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets:
- Neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional market; or
  - A specialized market with customized market demands.
  - A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for limited commercial development are not intended to accommodate large-scale retail sales, services, and trade activities, generally serving a city-wide or regional market. Such stores would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposable containers and/or providing drive-in facilities. No residential uses shall be located in the limited commercial district.

- L. *CG "Commercial General."* The CG district is established to implement comprehensive plan policies for managing general commercial development. The general commercial

**ORDINANCE DRAFT from Atty per direction of Council 3/5/18**

AN ORDINANCE OF THE TOWN OF MALABAR AMENDING CHAPTER 12.5 OF THE CODE OF ORDINANCES OF THE TOWN; CREATING A NEW SECTION 12.5-23.1 "HUGGINS PARK"; CREATING RESTRICTIONS APPLICABLE TO HUGGINS PARK; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE

**WHEREAS**, the Town owns Huggins Park which has a current zoning designation of institutional; and,

**WHEREAS**, the Town recognizes that Huggins Park represents a natural part of the Town attracting a diverse array of flora and fauna; and,

**WHEREAS**, the town recognizes that such lands are becoming rare and that preserving such important lands in their natural state to be enjoyed by the public substantially benefits the town residents; and,

**WHEREAS**, the Town Council has determined that it is in the best interests of the citizens of the Town to adopt regulations and restrictions specifically pertaining to Huggins Park to preserve its natural state and importance.

**NOW, THEREFORE, BE IT ORDAINED BY THE** Town of Malabar of Brevard County, Florida, as follows:

**SECTION 1.** Chapter 12.5 of the Code of Ordinances of the Town is amended by adding a new Section 12.5-23.1 to read as follows:

**"Sec. 12.5-23.1 Restrictions relating to Huggins Park**

(a). The following is the legal description of land forming Huggins Park:

Lots 1 through 18 and Lot 22, Block 5, J.J. POLLACK'S SUBDIVISION, Plat Book 2, page 26, Public "Records of Brevard County, Florida, Northwest 1/4, Section 31, Township 28 South, Range 38 East.

(b). In order to protect and preserve the unique and natural condition of Huggins Park, and notwithstanding any allowable uses in the Institutional zoning district, the following additional covenants and restrictions are imposed and such covenants and restrictions shall run with the land and bind any successor in interest of the Town to Huggins Park or any portion thereof:

1. Except as may be otherwise provided for herein no habitable structures shall be erected or constructed in Huggins Park;

2. Huggins Park shall be maintained and kept in its natural state, except that fencing, a pond, nature centers and zoos (as long as they serve a civic, cultural, park or educational purpose and are operated by a not-for profit tax exempt organization) may be erected on the property;

3. Notwithstanding the allowable uses in the Institutional zoning district, the uses provided for in section 2 above are the only uses allowed pursuant to these covenants and restrictions"



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

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

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

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

**SECTION 6.** The foregoing Ordinance was moved for adoption by Council Member \_\_\_\_\_ . The motion was seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the vote was as follows:

- Council Member Grant Ball \_\_\_\_\_
- Council Member Laura Mahoney \_\_\_\_\_
- Council Member Steve Rivet \_\_\_\_\_
- Council Member Dick Korn \_\_\_\_\_
- Council Member Danny White \_\_\_\_\_

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this \_\_\_\_ day of \_\_\_\_\_, 2018.

TOWN OF MALABAR

By: \_\_\_\_\_

Mayor Patrick T. Reilly, Council Chair

ATTEST:

\_\_\_\_\_  
Debby K. Franklin, CMC  
Town Clerk/Treasurer  
(seal)

Approved for Legal Sufficiency

\_\_\_\_\_  
Karl Bohne Jr., Town Attorney

## Brevard County Property Appraiser Office

### Description

The Exemption for Conservation Easements Dedicated in Perpetuity provides qualified applicants with a reduction in assessed value as governed by Florida Statute §196.26 (attached).

If the land is used exclusively for conservation purposes and 100% of any income generated is returned to the easement conservation management, a total exemption will be granted pursuant to Florida Statute §196.26(2).

If the land is used for allowed commercial purposes allowing the owner of the land to earn income, then the land is exempt to the extent of 50% of the assessed value.



CONSERVATION  
LAND  
EXEMPTION

Select Year: 2017 ▼ Go

## The 2017 Florida Statutes

Title XIV  
TAXATION AND FINANCE

Chapter 196  
EXEMPTION

[View Entire Chapter](#)

### 196.26 Exemption for real property dedicated in perpetuity for conservation purposes.—

(1) As used in this section:

(a) "Allowed commercial uses" means commercial uses that are allowed by the conservation easement encumbering the land exempt from taxation under this section.

(b) "Conservation easement" means the property right described in s. [704.06](#).

(c) "Conservation purposes" means:

1. Serving a conservation purpose, as defined in 26 U.S.C. s. 170(h)(4)(A)(i)-(iii), for land which serves as the basis of a qualified conservation contribution under 26 U.S.C. s. 170(h); or

2.a. Retention of the substantial natural value of land, including woodlands, wetlands, watercourses, ponds, streams, and natural open spaces;

b. Retention of such lands as suitable habitat for fish, plants, or wildlife; or

c. Retention of such lands' natural value for water quality enhancement or water recharge.

(d) "Dedicated in perpetuity" means that the land is encumbered by an irrevocable, perpetual conservation easement.

(2) Land that is dedicated in perpetuity for conservation purposes and that is used exclusively for conservation purposes is exempt from ad valorem taxation. Such exclusive use does not preclude the receipt of income from activities that are consistent with a management plan when the income is used to implement, maintain, and manage the management plan.

(3) Land that is dedicated in perpetuity for conservation purposes and that is used for allowed commercial uses is exempt from ad valorem taxation to the extent of 50 percent of the assessed value of the land.

(4) Land that comprises less than 40 contiguous acres does not qualify for the exemption provided in this section unless, in addition to meeting the other requirements of this section, the use of the land for conservation purposes is determined by the Acquisition and Restoration Council created in s. [259.035](#) to fulfill a clearly delineated state conservation policy and yield a significant public benefit. In making its determination of public benefit, the Acquisition and Restoration Council must give particular consideration to land that:

(a) Contains a natural sinkhole or natural spring that serves a water recharge or production function;

(b) Contains a unique geological feature;

(c) Provides habitat for endangered or threatened species;

(d) Provides nursery habitat for marine and estuarine species;

(e) Provides protection or restoration of vulnerable coastal areas;

(f) Preserves natural shoreline habitat; or

(g) Provides retention of natural open space in otherwise densely built-up areas.

Any land approved by the Acquisition and Restoration Council under this subsection must have a management plan and a designated manager who will be responsible for implementing the management plan.

(5) The conservation easement that serves as the basis for the exemption granted by this section must include baseline documentation as to the natural values to be protected on the land and may include a management plan that details the management of the land so as to effectuate the conservation of natural resources on the land.

(6) Buildings, structures, and other improvements situated on land receiving the exemption provided in this section and the land area immediately surrounding the buildings, structures, and improvements must be assessed separately pursuant to chapter 193. However, structures and other improvements that are auxiliary to the use of the land for conservation purposes are exempt to the same extent as the underlying land.

(7) Land that qualifies for the exemption provided in this section the allowed commercial uses of which include agriculture must comply with the most recent best management practices if adopted by rule of the Department of Agriculture and Consumer Services.

# TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 4  
Meeting Date: April 16, 2018

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

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**SUBJECT: Discussion of Potential Referendum Questions**

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**BACKGROUND/HISTORY:**

Every two years we put the MSTU question to the voters – do they want to continue the Municipal Services Taxing Unit (MSTU) with Brevard County Sheriff's Office for funding for those services not provided for under the statutory requirement. The Brevard County General Fund that each property owner pays covers the cost to operate the jail and the BCSO locations and the various sub agencies like, animal control, marine patrol, and agricultural response operations. They will also respond to capital felony crimes.

The MSTU funding covers the additional costs for BCSO to provide patrol and non-felony response services in the multiple districts within Brevard County. This has been put the voters every two years since 2008 and is approved each time by a great percentage.

The question expanding council member terms from two years to three years was on the 2014 ballot and lost due to a tie vote of 664.

The question of separate millage collection to offset the personnel costs of having 24/7 coverage at the Malabar Fire Department was proposed but never made it to the ballot for consideration. One mil would provide approximately \$220K based on this year's taxable value.

Non-binding questions could determine the desires of the voters. In the past we have asked if they would support a separate millage to purchase river front property.

We have also asked if they support continued purchases of Malabar land for conservation.

The deadline to submit referendum questions to the Elections office is mid-August.

**FINANCIAL IMPACT:** Discussion only current millage for MSTU is 1.1438

**ATTACHMENTS:** none

**ACTION OPTIONS:** Council Information