

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, AUGUST 07, 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 7/17/17**
Special Town Council Meeting & Budget Workshop Minutes 7/24/17
Exhibit: Agenda Report No. 1
Recommendation: Request Approval
- E. **BCSO REPORT:**
- F. **ATTORNEY REPORT:**
- G. **PRESENTATIONS:**
- **Chair to Present Letters of Commendation to Malabar Fire Department Personnel**
- H. **BOARD/COMMITTEE REPORTS:**
- **Trails and Greenways Committee:**
 - **Planning and Zoning Board**
 - **Park and Recreation Board**
- 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**
UNFINISHED BUSINESS/GENERAL ORDERS
ORDINANCES FOR FIRST READING: 4
2. **ORDINANCE 2017-06 – AMEND CHAPTER 2 TO PROVIDE FOR COUNCIL CONDUCT**
AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE II OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE CREATION OF A NEW SECTION 2-27; PROVIDING FOR DEFINITIONS; PROVIDING FOR A TOWN COUNCIL CODE OF CONDUCT AND PENALTIES FOR VIOLATION; PROVIDING FOR REPEAL AND CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND AN EFFECTIVE DATE.
Exhibit: Agenda Report No. 2
Recommendation: Request Approval of First Reading of Ord 2017-06
 3. **ORDINANCE 2017-07 – AMEND CHAPTER 2 TO PROVIDE FOR BOARD/COMMITTEE CONDUCT**
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.
Exhibit: Agenda Report No. 3
Recommendation: Request Approval of First Reading of Ord 2017-07

4. ORDINANCE 2017-08 MORITORIUM on MEDICAL MARIJUANA DISPENSARIES

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 ANY MEDICAL MARIJUANA TREATMENT CENTER AND/OR ANY MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITY, AS THOSE TERMS ARE USED AND DEFINED IN SB 8A; PROVIDING REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Approval of First Reading of Ord 2017-08

5. ORDINANCE 2017-09: MORITORIUM on WIRELESS INFRASTRUCTURE WITHIN MALABAR RIGHTS-OF-WAY

AN ORDINANCE OF THE TOWN OF MALABAR, FLORIDA ESTABLISHING AND IMPOSING A TEMPORARY MORATORIUM WITHIN THE TOWN OF MALABAR ON THE EFFECTS OF COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL 687 PASSED BY THE FLORIDA LEGISLATURE DURING THE RECENTLY ENDED 2017 LEGISLATIVE SESSION AND APPROVED BY THE GOVERNOR; PROHIBITING ANY AND ALL APPROVALS DURING THE MORATORIUM PERIOD FOR ANY RIGHT-OF-WAY LOCATED WITHIN THE TOWN OF MALABAR IN ORDER TO ALLOW AN OPPORTUNITY FOR THE TOWN TO REVIEW THE REQUIREMENTS OF THE SAID BILL AND TO DEVELOP AN ORDINANCE, AS APPROPRIATE, RELATING TO THE IMPACTS OF THE LEGISLATION; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR GEOGRAPHIC AREA ENCOMPASSED BY THE MORATORIUM; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Approval of First Reading of Ord 2017-09

RESOLUTIONS: 1

6. RESOLUTION 15-2017 – SUPPORT PROPOSED CONCEPT for WIDENING of SR514

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING PERTAINING TO A REQUEST FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION TO SUPPORT A CONCEPT FOR THE WIDENING OF SR 514, MALABAR ROAD FROM THE WESTERN BOUNDARIES OF THE TOWN TO U.S. HIGHWAY 1 (SR 5) IN THE TOWN OF MALABAR AND TO PROVIDE ONGOING MAINTENANCE OF THE MULTI-USE TRAIL INCLUDED IN THE RECOMMENDED ALTERNATIVE FROM MALABAR WOODS BOULEVARD TO MARIE STREET; PROVIDING FOR DISTRIBUTION OF REQUEST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Request adoption of Reso 15-2017

MISCELLANEOUS:

7. Action on Request to Accept 416 feet of Corey Road (north end)

Exhibit: Agenda Report No. 7

Recommendation: Request Action

M. DISCUSSION/POSSIBLE ACTION:

- Upcoming Public Hearing on 8/14/17 at 7:30PM re: Stormwater Fee Increase from \$36 to \$52
- Upcoming Public Hearings being prepared for advertisement at P&Z and Council re: FLUM

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; (1) Vacancy on Trails and Greenways.

Q. ADJOURNMENT:

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

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 1
Meeting Date: August 07, 2017

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 – 7/19/2017
- Special Town Council Mtg & Workshop – 7/24/2017

It was determined during the last year that the minutes should be a brief summary of what occurred in the meeting. This was confirmed again at the November 21, 2016 meeting. For specific details, audio of the meetings are available.

ATTACHMENTS:

Draft Minutes of the 07/19/2017 & 7/24/2017 meetings

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

July 17, 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 Patrick T. Reilly called the meeting to order at 7:30 pm. CM Ball 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, Lt. Hooker is here representing Chief Leonard Thomassen.

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

D. APPROVAL OF THE MINUTES:

1. Regular Town Council Meeting Minutes 7/3/17

Exhibit: Agenda Report No. 1

Recommendation: Request Approval

MOTION: CM Rivet / CM Ball to approve RTCM minutes of 7/3/17.

Discussion: CM Korn – pg 2 minutes don't state that the SCOTT paks came from Melb Beach. Franklin said she didn't think Chief mentioned the source.

Pg 2 – Ethics training – can he do it online. Franklin said he can do it in any manner he has; the training is being offered in Sat Bch for free on Aug 1. Under "Speakers card" Skip Hard – said "surprisingly" - yes, he did use that word. CM Mahoney mentioned "Ryan" – who is that? CM Mahoney said that was another Mr. Ryan, not Bud. Mayor said on Pg 3, Kovach this item per se – delete it. MC Mahoney said Karlene Conroy name is misspelled. Kovach said his name is misspelled also. **VOTE: All Ayes**

E. ATTORNEY REPORT: Medical Marijuana Legislation – email attached

Atty went over last discussion when Rep Fine discussed the SB 8 – Staff needs guidance We have our code in place. We can ban medical marijuana dispensaries.

If allowed it must be regulated like pharmacies. Have to look at Malabar Code and the new law again. Right now, the Malabar Code regulates hours of operation and proximity or dispensaries. We would have to change that to regulate similarly to pharmacies. Mayor said we can completely ban medical marijuana dispensaries. Atty Bohne said the IHB Mgr. Mark Ryan provided position papers to his council recommending a moratorium.

Attorney Bohne is recommending a moratorium to give Malabar 180 days to figure this out. Consensus of Council to draft a moratorium Ordinance.

Wireless Communication infrastructure in ROW.

Small telecommunication within row but will not have full control over – complex language. The current recommendation is to do a moratorium. Something is going to happen fast on this legislation. There are certain things we can and can't do. The League will come up with a draft Ord that we can copy. Atty will have for first reading at next meeting.

F. PRESENTATION: 1**Presentation by Victor Poteat, Aitkens Engineering on SR514 Widening**

He introduced Ms. Lorena Cucek and said she is the new FDOT representative on this project. PD&E process (hard copy attached). Mr. Poteat said the following did not change from earlier presentations:

- 3 lanes from Marie Street to Highway 1
- 4 lanes from Babcock Street to Weber Road
- 2 lane Rural between Corey Road and Marie Street with multi-use trail

This presentation focused on the area between Weber Road and Corey Road:

- 4 lane Suburban between Weber and Corey Roads with paved inside shoulders, bike lanes, sidewalks, improved drainage and a grassed median.
- 2 roundabouts – one each at Corey and Weber

He explained that the presentation didn't show detail on the details for each roundabout at this time.

Next steps are to meet with the Selection and Management Committee (SMC) of the Environmentally Endangered Lands (EEL) Program on Friday 7/21/17 and then the Space Coast Transportation Planning Organization (TPO) then the Brevard County Commission. Would like to have the approval from SMC before going to the Florida Department of Environmental Protection (FDEP) Acquisition and Restoration Council (ARC) but it is not required. It is their responsible for review of all land use plans involving state-owned conservation land. Aitkens will then update documents accordingly and prepare the State Environmental Impact Report (SEIR) and prepare for a Public Hearing.

What they would like from the Town is a Resolution of support for this concept and the commitment from the Town to do the maintenance of the multi-modal trail.

Mayor asked where the Public Hearing would be held. Mr. Poteat said at the Palm Bay hospital. The ARC meeting will be in Tallahassee.

Mayor pointed out re: the roundabouts that they only showed two lanes in each direction, should be four. Mr. Poteat stated the presentation didn't depict exact detail. Mayor would like to see the analysis they reviewed to reach conclusion that only 2 lanes were necessary going into roundabouts. Mr. Poteat said it is a three-step process: the traffic volumes; the cost, and it is a pass, then a more detailed cost analysis based on actual traffic counts. Traffic study of volume at Corey will determine two or four lanes going into the roundabout; it is based on traffic counts.

CM Ball asked for cost estimate for trail maintenance for one mile. CM Korn said this is the best presentation he has seen. His concern is still with the speed; it should be set at 45mph. Right now, there is no room to pull something over. There are at least three or four creeks that go under the road and go north to Turkey Creek and go out to the Indian River Lagoon. He is also concerned with bottleneck going into Corey Road intersection. He then he mentioned pond "N" is some of the highest property in Malabar. Mayor said it is also all zoned Commercial General (CG). Also, there are multiple owners.

CM Mahoney – she realizes he will be going to TPO to present – hopes to still can use the safety money. Mr. Poteat stated this project will not impact that project.

She saw the plans at the hearing held at the hospital. There was a Resolution done in 2016 in support of these safety improvements. TA said the elevations of the road would change. Mr. Poteat said he is not the roadway engineer but knows there must be a certain distance between water table and bottom of hard surface. CM Mahoney asked when he knew he would be at this meeting. She would have liked to have the presentation information sooner.

CM Kohler said this is the closest to what the Town has been asking for and thanked Mr. Poteat and Ms. Cucek for the presentation.

CM Korn asked if he was looking for positive support of the plan presented; he could not support this. Mr. Poteat said the three lanes was considered and dismissed as it too much of the EEL land would be taken and lowering the speed could not be done in this kind of roadway.

CM Rivet said they are not expected to vote tonight. Put on the next agenda.
Mayor said the area between Marie to Hwy 1 is 3 lanes. Yes, that was not changed.

Council thanked Mr. Victor Poteat. Mayor asked if they need to do a new resolution. Clerk said we have two similar ones that were done and tabled that could be modified and used to support this concept. Put it on next agenda.

G. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF

- **ADMINISTRATOR:**

Mentioned the Neighborhood Mtg on 7/20 to present to those residents in the project work area what the plan will cover. Atz Road east of Candy Lane to Jordan Blvd.

- **CLERK:** Audit Presentation for FY 15/16 is set for 7/24/17 at 7PM followed by a budget workshop.

- **CHIEF:** Lt Hooker, acting Chief while he is out of Town.

Report covers a 5-week period. Had 70 calls. The Atz Road fire had several subsequent call outs; other structure fires and automobile accidents. Training hours 240 for June; had 247 hours of call participation from volunteers. Fire 1 class has been approved by State and that will generate revenue in autumn.

CM Mahoney asked who their Medical Director is and how much is he paid. Lt. Hooker replied that it is Dr. McPherson and he is doing it for free. CM Korn asked if there were any significant equipment problems since last report. Lt. Hooker replied there was an issue with the Tender but Palm Bay Fleet corrected it. Lt. Hooker continued that the SCOTT paks had been received and put into use.

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.

Speaker's Card:

Holly Yolles, Corey Road, spoke to the Council about fireworks. Had 14 days of fireworks. BCSO said it was a holiday. She read from a paper. Her animals can't be sedated. She wants Council to know that she and others like her would like their concerns recognized and validated. She asked BCSO if she could press charges when she called BCSO at 11:30pm and was told no.

CM Mahoney said Malabar could do something creative and offer to sell them the ones that don't make noise. Attorney said it is a misdemeanor and unless BCSO see the offender, they can't make an arrest.

Speaker's Card:

Richard Kovach, is a little bit disappointed that he can't offer correction to 7/3/17 minutes. The minutes of 7/3 omitted that portion of his statement and it lost the context of his statement.

Clerk was recognized by Chair and stated for Council that the minutes are to reflect a summary of Council actions on agenda items and other council actions. If a statement is read at the podium and provided to the Clerk, it will be attached to the minutes in the record.

Richard Kovach said the enforcement is lacking by the BCSO regarding fireworks. The legislation is there.

- I. PUBLIC HEARINGS/SPECIAL ORDERS: 0
- J. UNFINISHED BUSINESS/GENERAL ORDERS
 - ORDINANCES FOR FIRST READING: 0
 - RESOLUTIONS: 0
 - MISCELLANEOUS: 2

2. Form DR-420 – Tentative Maximum Millage and Public Hearing Date

Exhibit: Agenda Report No. 2
Recommendation: Request Approval

Speaker's Card:

Brian Vail, Smith Lane, should go towards the maximum. If Council sets it low and doesn't initially set it high so they have it and during budget workshops determine that it needs to be higher, they can't increase it without great expense.

MOTION: CM Rivet / CM Kohler to set the max tentative millage at 2.0906 to begin the budget process.

Discussion: CM Rivet explained to public that this is the millage that will be advertised in the TRIM notice mailed to property owners. CM Rivet said this does not mean that is what it will be; it is a starting point. He does not intend to increase the millage. CM Ball said that is his feeling also. CM Mahoney agreed to this for setting the maximum. She said she would support the rolled-back rate of 1.9005.

VOTE: All Ayes.

MOTION: CM Kohler / CM Rivet to set the date for the first Public Hearing on the 2017/2018 Budget on Monday, 9/11/17.

VOTE: All Ayes.

3. Lowering Speed Limit to 20mph on Selected Unpaved Roads

Exhibit: Agenda Report No. 3
Recommendation: Request Approval

Chair directed TA to introduce. There has been some discussion that when requested by residents on a dirt road to lower the speed it can't be set lower than 25mph. TA stated that F.S. 316 allows for municipalities to lower speed to 20 mph if a traffic study has been done. We have done the study. BCSO can enforce the 20mph. It is not necessary to have separate studies for each street. We have done that. He would propose to do that on a case by case basis when they get calls. As we did with the sand hill crane signs, we can ask for a donation to offset the cost to buy the sign, post and labor to install.

MOTION: CM Ball / CM Mahoney to approve the 20mph where requested. Discussion: CM Ball questioned who gets to decide. CM Mahoney suggested tabling. CM Korn is totally against this; traffic signs are the responsibility of the municipality; not for residents to make donations. He stated the enforcement of this thing would be impossible.

Speaker's Cards: none

VOTE: Aye, 1 (CM Kohler); Nay, 4. Motion failed 4 to 1.

COUNCIL CHAIR MAY EXCUSE ATTORNEY NOW

Mayor asked for status of Ordinance on Council/Board civility. Ordinance will be on next agenda for first reading.

K. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Dist 1: It is very hard to sit up here to make decisions without having the input from residents and asked public to let Council know how they feel. If you want roads fixed and drainage problems addressed they will budget for them. If you don't want to fix the ditches and roads, let them know that too. Council is trying to make decisions on what is the best for all of Malabar.

CM Dist. 2: Would like to get the packet a little sooner.

CM Dist 3: CM Rivet – Budget meetings are coming up – wants audience to know what is important to them; they need resident input – come to meetings and tell your neighbors.

CM Dist 4: Need to provide the basic municipal services and whatever money is needed to do that. Don't need to budget frivolous things and don't think they have. He called the Clerk today on millage question and got a very thorough answer. The tax bill is going up. Costs go up – provide what is necessary for the Town. He has participated in three budget years and they need to continue to be attentive.

CM Dist. 5: CM Kohler also asked residents for their input. He asked TA about missing sign. TA will check it out and get back to him.

Mayor: Will miss the Aug 7 meeting - he will be on vacation. CM Rivet said he will be in attendance to Chair the meeting.

M. ANNOUNCEMENTS:

(1) Vacancy on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board; (1) Vacancy on the Trails & Greenways

N. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 9:07PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 8/07/2017

SECURITY

...it's in YOUR hands



Fireworks
occurred
for 14 days

Holly Yolles

Sparklers are legal

- Sparklers
- fountains
- snakes
- glow worms

Possession or use of illegal fireworks
is classified as a misdemeanor

Violation can result in arrest

\$1,000 fine

1 year in prison

Mortars are most disturbing.

→ Support?

How we can ask them to
enforce

newsletter
article

MALABAR COUNCIL WORKSHOP MEETING

July 24, 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
COUNCIL MEMBERS:	GRANT BALL
	LAURA MAHONEY
	DICK KORN, excused
	RICHARD KOHLER
ADMINISTRATOR	DOUG HOYT
CLERK/TREASURER:	DEBBY FRANKLIN
DEPUTY CLERK/TREASURER:	MATT STINNETT

**C. AUDIT PRESENTATION FOR 15/16 Fiscal Year
Chair introduced Audit Firm:**

Ray Bastin, partner with Withum. Also, introduced Timothy (TJ) Houmes – who was the Audit Supervisor on job. Mr. Bastin then went through report. Pg 1 of 2 is their report. The financial statements and the footnotes are a responsibility that belongs to the Town Council. The Audit is based on Generally Accepted Accounting Principles (GAAP). An Audit Firm's "Opinion" is the most important result of an audit and Malabar received a Clean Opinion. Any adjustments made were recorded. Pg 2, supplementary information reported by the Town.

Pg 31 and 32 re: Florida Retirement System (FRS) that is now required to be reported per the Governmental Accounting Standard 68 showing the proportionate share of the net pension liability.

He continued that the auditors in the field also test Internal controls on a wide range of procedures and test for compliance to those procedures. That report is in the back.

Pg 3, info provided by mgmt. Key highlights are in middle of page. Pre-paid assets are deferred outflows. By 3.5 mil net position. 497K are assets that can be used. Decreased by 13K

In the FY ending 9/30/16 there were reduced expenses. He explained the requirement by State Auditor to report financials in two styles – the government wide financial reporting and government fund financial reporting. Summarized balance sheet.

Pg 7 CM Ball asked about Federal Inflation Rate used of 2.4% - Calculations.

On pg 26 that was the inflation rate used by FRS is 2.6%

TA said that is the inflation rates posted and vary widely depending on the subject. 2.41 is what we are using. Some go up to 7%. The FRS actuarial used a rate of 2.6 in their Assumptions.

Pg 9, govt wide – govt. This is different than looking at your General Fund. Net pension liability is a big number GASB 68 required it to be posted. CM Ball asked when that was effective. – last year. 760,000.00.

Pg 10 govt wide statement of activities. Presented per the requirements of the Auditor General

Pg 11 this is the governmental reporting – does not include Cap Asset or long term obligations

Pg 12 statement of revenue by line item. Had a gain in the current year of 132K. Fund balance of 1.1 mil.

Pg 16 cap assets – what is capitalized. And how it performs.

Pg 19 footnote 2, cash explained the difference. Footnote 3 and 4. 5 accrued expenditure

Pg 21, Footnote 6 is the millage rate. Footnote 7 is the pension and takes up 7 pages. That is more information than has ever been required. GASB wanted more information or clarity on what goes into that calculation. Info from the State Retirement System. Now must wait until they (State) do their audit and get that information from

Pg 23 shows their investment rate of return. That is an assumption. It is an actuary so it is based on historical. Data.

Pg 27 Footnote 8 as Lessor and Lessee: cell tower lease revenue, the copiers that the Town is leasing as an expenditure. That is what would have to be paid out. Long term expenditure is the accruals of employees.

Pg 29 other fund requirement disclosures. Pre-paid – non-spendable. 930K that you have in assets.

Pg 30 supplementary information. Original budget and summary of budget adjustment show 1.55 mil in revenue and came in with 14K more.

1.6 mil budgeted in expenses and the actual was 1.4 – so doing a good job.

CM Ball said his number is 19,000 off from that number.

Pg 31, GASB requires additional pension liability related to the .0023% of the entire FRS fund.

Pg 32 same – these are the contributions made by the town.

Pg 33 additional report done by Auditors. They looked at compliance and spent testing expenditures seeing that you are following your own policies and internal controls are working. Did have one significant deficiency and that was on pg 5, required to have two signatures that only had one signer. Follow your policy for two signers.

Pg 36 did not have any findings. – next year you will see the one finding and recommendation.

Pg 37 the State wants these items addressed. There were no alarming findings. Affirmative statements.

The last page is the requirement of FS 218 to make sure your investments are in line with the statute. CM Rivet asked if the reserves were adequate. Mr. Bastin said 952K is unrestricted and can be spent. For operating purposes, you should have 20% of your operating budget in reserves.

Council thanked Auditors. Chair asked for a motion on Resolution 14-2017.

MOTION: CM Rivet CM Kohler to approve resolution accepting the audit for FY 15/16.

Discussion: CM Mahoney said the resolution should have been put on the agenda.

Roll Call vote: CM Ball, Aye; CM Mahoney, Aye, CM Rivet, Aye; CM Korn, excused; CM Kohler, Aye. Approved 4 to 0.

D. WORKSHOP ACTION: DISCUSSION ON 2017/2018 BUDGET – began immediately following special meeting, approximately 7:45pm.

Chair asked the TA to provide overview.

Revenues:

TA explained the revenues estimates. The column on the right side of budget page provides source of estimate.

Expenditures:

511 Legislative: includes the recording equipment and support and the updates to the code. Staff also put in an amount to replace the chairs the public sit in.

512: Executive: related to Administrator. Column to right of budget shows a conservative estimate of what Council can expect to pay for next Administrator.

513: Finance and Administration: this department includes cost for audit, elections, legal notices as well as Clerk/Treasurer personnel and clerical assistant. CM Mahoney questioned the pay increases. TA said Deputy has two college degrees and is working towards his Masters. CM Rivet said there is a cost associated to turnover. CM Mahoney said G-V said they outsource. There is 2.93 per household. CM Ball said we have been down that road. That is when his eyes were done. Paying a lot more in taxes than Malabar residents.

514: Legal: Attorney Bohne and possible lawsuit pending.

515: Council will need to budget funds here for the Future Land Use Map update and the text changes in the Comprehensive Plan.

519: General Government: Operational costs of the Town Hall, Building Department and Public Works buildings, grounds, pest control, IT expenses. Deputy explained the problems with the server and the need for corrective action in the upcoming fiscal year. Clerk pointed out that although not in the budget column the notes indicate that the Town Hall building needs either shutter or impact windows on the east side and a reroof.

522: Fire Control: Chief is not here but staff will try to answer any questions.

CM Kohler asked about 4600 repairs and maintenance – with new fire truck should that be less. Deputy said the new truck is 11 months out. TA said about all volunteer Dept we had an average 100 calls per year. Now we are running 600 calls a year. Today had 4 calls. Movement toward a combo Dept gives better coverage and protection to Malabar citizens.

Ask Chief about radios and operating expenses. 522.6400

524: Protective Inspections: This is the Building Department. Clerk pointed out that with the increase demand on the Building Department they may want to consider hiring a Building Official. The estimate in the column to the right of the budget for Building Official show what a part-time person would cost. She did not include the related personnel costs for that person. The AABO is the Administrative Assistant to the Building Official. Under training the amount is to keep the Building Official certifications up to date. Malabar pays a third of the cost.

538: Flood Control / Stormwater Management: Doug explained how these projects are paid from the estimated revenue from the non-ad valorem assessment for stormwater and the additional funds needed are "carried forward" from prior year. The revenues are also shown separately on the Funding

Sources Summary Page: Account Number 38 includes estimated new revenue and Account Number 39 is the Use of Reserved Funds "Carried Forward"

541: Streets and Roads

TA talked about railroad repair we got the estimate of \$130K from FEC. It appears the crossing has been repaired. The invoice has not been received. He will have talked to Harris and Data Mgmt. The other looming expense will be Brook Hollow bridge.

Council then discussed road paving and the use of special assessments.

572: Parks and Recreation

Staff added a new person here. Council asked if this was from Streets and Roads. TA said no that we used to have six employees plus the Director. He also mentioned the replacement of the culvert pipes that are failing and needing replaced and how many employees it takes to perform these tasks.

CM Mahoney said why do we pay for a PW Director. Why couldn't the Park Employee report to TA. TA said the PW Director is a hands-on supervisor. Mayor mentioned the chain of command sheet in the front of the budget.

CM Mahoney still wants a schedule published. TA said that can't be done because on any given day some other urgent problem would require them elsewhere and then Council would say the schedule wasn't followed. CM Kohler said more like a summary report of what was done. TA will work on that.

TA went over the staffing count from 2007 to now and the great reduction they have had to manage with.

574: Special Events: This is budgeted annually as a break-even event. 5K in revenue 349.5000 and 5K in this expenditure account.

Chair Reilly, without objection, adjourned the workshop meeting at 9:20 pm.

BY: _____
Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST:

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

Approved: RTCM 8/7//2017

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 2
Meeting Date: August 17, 2017

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Ordinance 2017-06 Amend Chapter 2 of Code to provide for Council Code of Conduct

BACKGROUND/HISTORY:

This item is before Council as a result of Council support for a Code of Conduct to be executed by each elected official. This amends the code to provide this requirement.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Ordinance 2017-06
Code of Conduct – Council

ACTION OPTIONS:

Request Approval of First Reading

ORDINANCE 2017-06

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING ARTICLE II OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN; PROVIDING FOR THE CREATION OF A NEW SECTION 2-27; PROVIDING FOR DEFINITIONS; PROVIDING FOR A TOWN COUNCIL 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. Article II of Chapter 2 of the Code of Ordinances of the Town is amended by adding a new Section 2-27 to read as follows;

Sec. 2.-27. Town Council 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

-Councilmember shall mean each individual person elected to a seat on the Town Council and the Mayor.

-Censure shall mean a formal vote by the majority of members of the Town Council members present and entitled to vote disapproving the actions of a councilmember in violation of this Code of Conduct.

2. Code of Conduct

(a) I affirm that the proper statutory and Town Charter role of the members of the Town Council, as with any elected member of a legislative body, is to act collectively, not individually, to set and/or revise and/or to apply the town's governing policies and that the Town Administrator and staff administer such policies.

(b) I understand that no individual member of the Town Council manages 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 policy wishes of one individual member of the Town Council. *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 a member of the Town Council, 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 a member of the Town Council. I will refrain from intimidation and ridicule of fellow members of the Town Council, town administrator, town attorney, staff, citizens of the town, members of the public, vendors of the town and those who do business with the town.

(e) In my capacity as a member of the Town Council, 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 elected official and the honor of the town council.

(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 the town council.

(h) I will devote adequate time for preparation prior to town council 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 members of the Town Council, town administrator, town attorney, staff, citizens of the town, members of the public, vendors of the town and those who do business with the town. I will listen actively and objectively to others' concerns or constructive criticisms.

(j) 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 members of the Town Council. I will delineate clearly for any audience whether I am acting or speaking as an individual citizen or in my capacity as a representative of the town.

(k) 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.

(l) 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.

(m) I will promote constructive relations in a positive climate with all town employees, town attorney, and town contractors and consultants consistent with my role as a member of the Town Council, 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 other members of the Town Council, town administrator, town attorney, staff, citizens of the town, members of the public, vendors of the town and those who do business with the town and other sharing in, and striving to achieve, the town's mission.

(n) I will enhance my knowledge and ability to contribute value to the town as a councilmember 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 councilmember.

(o) I will value and assist my fellow councilmembers 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.

(p) 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 and will accept the will of duly authorized decisions of the town council and town electorate.

(q) I understand that my first priority as a councilmember will always be to look out for the best interests of the citizens of the town and the public health, safety and welfare. I will seek to provide appropriate leadership that nurtures and motivates town citizens to be stakeholders in the affairs and achievements of the town.

(r) I will be accountable to the Town Council for violations of this code of conduct.

3. Penalties for Violation of Code of Conduct.

(a) Before any councilmember shall be found to be in violation of this Code of Conduct the councilmember shall be given a public hearing concerning any charge of a violation of this Code of Conduct. The date and time of a public hearing concerning a member charged with a violation of this Code of Conduct shall be published in a newspaper of general circulation in the town at least one (1) week in advance of the hearing, or as otherwise provided by State or local law.

(b) All such charges shall be in writing and filed with the Office of the Town Clerk. The written complaint must be based substantially upon the personal knowledge of the complainant and signed under oath or affirmation by the person filing the complaint. The Town Clerk shall cause the notice in subparagraph (a) to be drafted and published. To the extent possible such hearing shall occur at the next regularly scheduled meeting of the town council. In the event that there is insufficient time to cause the publication in subsection (a) above to occur or if the next available meeting of the town council has been previously cancelled then the hearing shall be scheduled for the next available regular meeting of the town council.

In the event that any councilmember shall be found in violation of this Code of Conduct the following penalties shall be imposed:

-For a first violation: a notation in the councilmembers file that a first violation of the Code of Conduct has been found to have been committed by a majority vote of the Town Council entitled to vote on such matter ;

-For a second violation: Censure;

-For a third violation: At the discretion of the Town Council, sanctions may include additional censure, or removal or exclusion from leadership positions, other official positions or duties.

-For any subsequent violations: If there is a determination of such a subsequent violation and upon the vote by a majority vote of the Town Council entitled to vote on such matter the institution of subsequent forfeiture of office proceedings pursuant to FS 112.501 (2)."

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 _____. 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 Richard Kohler	_____

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

By: TOWN OF MALABAR

Mayor Patrick T. Reilly,
Council Chair

(seal)

1st Reading: 8/7/17
2nd Reading: 8/21/17

ATTEST:

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

Approved for Legal Sufficiency:

Karl Bohne, Jr.
Town Attorney



TOWN OF MALABAR

2725 MALABAR ROAD • MALABAR, FLORIDA 32950

(321) 727-7764 OFFICE • (321) 722-2234 FAX

www.townofmalabar.com

Town of Malabar

Council Member Code of Conduct

(Town Code Chapter 2 – Code of Conduct) In addition to adhering to the requirements of State Law, all Council Members shall commit to the following Code of Conduct by written affirmation, which shall remain on file with the Town Clerk, as follows:

I affirm that the proper Statutory and Town Charter role of a Council Member, as with any elected member of a legislative body, is to act collectively, not individually, to set and/or revise and/or to apply the Town's governing policies and that the Town Administrator and Staff administer such policies.

I understand that a Council 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 the chief executive officer; 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 policy wishes of one individual Council Member.

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 a Council Member, I will avoid conflicts of interest and avoid using my official position for personal, professional, or partisan gain.

I will demonstrate dignity, respect, and courtesy toward those whom I am in contact with in my capacity as a Council Member. I will refrain from intimidation and ridicule of fellow Council Members, Town Administrator, Town Clerk, Town Attorney, Staff, citizens of the Town, and Town customers.

In my capacity as a Council 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 elected official and the honor of the Town Council.

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.

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 the Town Council.

I will devote adequate time for preparation prior to Town Council Meetings and as much as possible, I will attend such meetings and all other scheduled events where my participation is required.

I will respect diversity and encourage the open expression of divergent ideas and opinions from fellow Town Council Members, Town Administrator, Town Attorney, Staff, and citizens of Malabar. I will listen actively and objectively to others' concerns or constructive criticisms.

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 Council Members. I will delineate clearly for any audience whether I am acting or speaking as an individual citizen or in my capacity as a representative of the Town.

I will maintain in confidence any privileged or confidential information 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 Town Administrator 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 or Town Administrator, I will return to the Town any privileged or confidential documents or materials provided to me by the Town while serving on the Town Council.

I will abide by all laws of the State applicable to my conduct as a Council Member, including, but not limited to, the Government in the Sunshine Law, the Florida Code of Ethics for Public Officers, and Town Rules of Procedure and Codes of Conduct.

I will promote constructive relations in a positive climate with all Town employees, Town Attorney, and Town contractors and consultants consistent with my role as a Council Member, 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 Administrator's, Staff, Town Attorney, Town contractors and consultants, business partners, and other sharing in, and striving to achieve, the Town's mission.

I will enhance my knowledge and ability to contribute value to the Town as a Council 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 Council Member.

I will value and assist my fellow Council 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.

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 and will accept the will of duly authorized decisions of the Town Council and Town electorate.

I understand that my first priority as a Council Member will always be to look out for the best interests of the citizens of the Town and the public health, safety and welfare. I will seek to provide appropriate leadership that nurtures and motivates Town citizens to be stakeholders in the affairs and achievements of the Town.

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

Signature

Date

Print Name

Witness

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 3
Meeting Date: August 17, 2017

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Ordinance 2017-07 Amend Chapter 2 of Code to provide for Board Code of Conduct

BACKGROUND/HISTORY:

This item is before Council as a result of Council support for a Code of Conduct to be executed by each appointed Board and Committee Member. This amends the code to provide this requirement.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Ordinance 2017-07
Code of Conduct – Boards and Committee Members

ACTION OPTIONS:

Request Approval of First Reading

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 _____. 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 Richard Kohler	_____

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

By: TOWN OF MALABAR

Mayor Patrick T. Reilly,
Council Chair

(seal)

1st Reading: 8/7/17

2nd Reading: 8/21/17

ATTEST:

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

Approved for Legal Sufficiency:

Karl Bohne, Jr.
Town Attorney



TOWN OF MALABAR

2725 MALABAR ROAD • MALABAR, FLORIDA 32950
(321) 727-7764 OFFICE • (321) 722-2234 FAX
www.townofmalabar.com

Town of Malabar Board Member Code of Conduct

(Malabar Code Chap 2. – Code of Conduct) In addition to adhering to the requirements of State Law, any person appointed to serve as a Member of a Town Board or Committee shall commit to the following Code of Conduct by written affirmation, which shall remain on file with the Town Clerk, as follows:

I affirm that the proper Statutory and Town Charter role of Members of appointed Town Boards and 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.

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 as the Chief Executive Officer; 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.

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.

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, and those conducting business with the Town.

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.

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.

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.

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 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 Malabar. I will listen actively and objectively to others' concerns or constructive criticisms.

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.

I will maintain the confidentiality of privileged information and will abide by all laws of the State applicable to my conduct as a Board or Committee Member, including but not limited to the Government in the Sunshine Law, the Florida Code of Ethics for Public Officers, and Town Rules of Procedure and Codes of Conduct.

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.

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.

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.

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.

As a Board or Committee Member, 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.

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

Signature

Date

Print Name

Witness

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 4
Meeting Date: August 17, 2017

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Ordinance 2017-08 Moratorium on Medical Marijuana Dispensaries

BACKGROUND/HISTORY:

The Attorney spoke to Council for the need to do this until the State establishes regulations.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Ordinance 2017-08

ACTION OPTIONS:

Request Approval of First Reading

ORDINANCE NO. 2017-08

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 ANY MEDICAL MARIJUANA TREATMENT CENTER AND/OR ANY MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITY, AS THOSE TERMS ARE USED AND DEFINED IN SB 8A; PROVIDING REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, in November of 2016, better than 70% of the voters in Florida approved Amendment 2 relating to the use of medical marijuana; and

WHEREAS, the Town currently regulates medical marijuana dispensing under its Code, Ordinance 2017-02; and,

WHEREAS, since the adoption of Ordinance O2-2017, the State of Florida adopted SB 8A which created the statutory laws implementing Amendment 2; and,

WHEREAS, the Town desires to wait to issue any permits, development orders, modifications or approval for any medical marijuana treatment center dispensary and/or any medical marijuana treatment center dispensing facility, as those terms are used and defined in SB 8A to allow it adequate time to review the impact, Amendment 2, SB 8A and all applicable Florida Department of Health regulations prior to issuing any permits, development orders, modifications or approvals and to review applicable regulations for the avoidance of regulatory conflict; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Malabar, Florida, as follows:

Section 1. Legislative Findings.

That the above recitals are true and correct and are incorporated herein by reference.

Section 2. Intent and Purpose.

The intent and purpose of this Ordinance is to provide the Town of Malabar with the opportunity to review the impact of a constitutional amendment legalizing medical marijuana, SB 8A and the impact of any Department of Health regulations that have yet to be enacted prior to issuing any permits, development orders, modifications or approvals.

Section 3. Moratorium Imposed.

The Town council hereby prohibits the issuance of any permit, development order, modification or approval for the operation of any medical marijuana treatment center and/or any medical marijuana treatment center dispensing facility, as those terms are used and defined in SB 8A in any area subject to the jurisdiction of the Town and a moratorium is declared effective as follows:

1. The Town of Malabar shall not accept, process or approve any application or other request for business tax receipts, licenses, building permits, land use permits, or any development permits concerning or related to a marijuana treatment center and/or any medical marijuana treatment center dispensing facility, personal caregiver or any other marijuana related activity or use within the corporate limits of the Town.

2. The Town of Malabar shall not accept, process or approve any licenses, permits, modifications or approvals for any property, entity, or individual for the sale or dispensation of marijuana, or for the operation of any marijuana treatment center and/or any medical marijuana treatment center dispensing facility, or to operate as a personal caregiver so long as this ordinance is in effect. No person, entity or partnership shall establish, operate or engage in the operation of a medical marijuana treatment center and/or any medical marijuana treatment center dispensing facility, within the corporate limits of the Town.

Nothing in this temporary moratorium shall be construed to prohibit the medical use of marijuana or low-THC cannabis by a qualifying patient, as determined by a licensed Florida physician, pursuant to Amendment 2, Fla. Stat. § 381.986 (2017)(SB 8A) or other Florida law.

Section 4. Duration of Moratorium.

The moratorium imposed by this ordinance shall be effective upon adoption of this Ordinance and shall remain in effect for a period of for one hundred eighty (180) days from the final adoption of this Ordinance, unless rescinded sooner. Prior to the expiration of the moratorium, the town may extend the moratorium for an additional eighty (80) days.

Section 5. Ordinance to Be Liberally Construed.

This ordinance shall be liberally construed to carry out its purposes, which are deemed to be in the best interest of the public health, safety, and welfare of the citizens and residents of the Town of Malabar.

Section 6. Severability.

Should any section, phrase, sentence, provision, or portion of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 7. Effective Date

This Ordinance shall take effect immediately upon its final adoption by the Town council.

Section 8. The foregoing Ordinance was moved for adoption by Council Member _____.

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 Richard Kohler

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

By: TOWN OF MALABAR

 Mayor Patrick T. Reilly,
 Council Chair

(seal)

1st Reading: 8/7/17
 2nd Reading: 8/21/17

ATTEST:

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

Approved for Legal Sufficiency:

 Karl Bohne, Jr.
 Town Attorney

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 5
Meeting Date: August 17, 2017

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Ordinance 2017-09 Moratorium on Wireless Infrastructure within Malabar Rights-of-way

BACKGROUND/HISTORY:

The Attorney spoke to Council for the need to do this until the Attorney and Staff can determine the impact on local regulations and authority.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Ordinance 2017-09

ACTION OPTIONS:

Request Approval of First Reading

ORDINANCE 2017-09

AN ORDINANCE OF THE TOWN OF MALABAR, FLORIDA ESTABLISHING AND IMPOSING A TEMPORARY MORATORIUM WITHIN THE TOWN OF MALABAR ON THE EFFECTS OF COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL 687 PASSED BY THE FLORIDA LEGISLATURE DURING THE RECENTLY ENDED 2017 LEGISLATIVE SESSION AND APPROVED BY THE GOVERNOR; PROHIBITING ANY AND ALL APPROVALS DURING THE MORATORIUM PERIOD FOR ANY RIGHT-OF-WAY LOCATED WITHIN THE TOWN OF MALABAR IN ORDER TO ALLOW AN OPPORTUNITY FOR THE TOWN TO REVIEW THE REQUIREMENTS OF THE SAID BILL AND TO DEVELOP AN ORDINANCE, AS APPROPRIATE, RELATING TO THE IMPACTS OF THE LEGISLATION; PROVIDING FOR LEGISLATIVE AND ADMINISTRATIVE FINDINGS; PROVIDING FOR GEOGRAPHIC AREA ENCOMPASSED BY THE MORATORIUM; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Committee Substitute for Committee Substitute for House Bill 687 passed the Florida House of Representatives on April 28, 2017 and the legislation was subsequently passed by the Florida Senate on the same day and subsequently approved by the Governor with an effective date of July 1, 2017; and

WHEREAS, the bill creates the "Advanced Wireless Infrastructure Deployment Act"; and

WHEREAS, the legislation establishes a process by which wireless providers may place certain "small wireless facilities" on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of an "authority" (i.e., a county or municipality); and

WHEREAS, thus, the bill provides that the Town may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way, except as specified in the legislation; and

WHEREAS, Town staff has not had adequate time to evaluate the impacts or address local issues that are presented by the legislation; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the Town as set forth at Article VIII, Section 2, of the Constitution of the State of Florida; Chapter 166, Florida Statutes, and other applicable controlling law.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA THAT:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.

(a). The foregoing recitals (whereas clauses) are hereby ratified, affirmed and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. STUDY AND REVIEW PROCESS.

(a). During the temporary moratorium period designated in Section 3 of this Ordinance, the Town staff, are hereby directed to study controlling State law regarding Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017.

(b). The essential purpose of such a review and study by the Town staff is to develop and propose to the Town Council amendments to the Town's codes and ordinances as may be necessary and appropriate to conceptualized a framework of authorized regulation and fee structure as to implementing the legislation.

SECTION 3. IMPOSITION OF TEMPORARY MORATORIUM.

(a). All activity relating to the acceptance, review and action upon matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017 is temporarily suspended in order for the Town to have the time and opportunity necessary to a framework of authorized regulation and fee structure as to implementing the legislation.

(b). Based upon the legislative findings, purpose, and intent set forth herein, there is hereby imposed a temporary moratorium on all matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017.

(c). During the time that the moratorium imposed by this Ordinance is in effect, no applications will be accepted with regard to the matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017 that pertain to activities proposed to occur within the Town Limits of the Town.

SECTION 4. GEOGRAPHIC AREA COVERED. This Ordinance applies to all areas within the Town Limits of the Town of Malabar.

SECTION 5. DURATION OF MORATORIUM.

(a). The temporary moratorium established by this Ordinance has taken effect upon first reading of this Ordinance (under the zoning in progress doctrine; pending ordinance doctrine) and shall terminate on January 1, 2018.

(b). No applications for approvals subject to the moratorium will be accepted by the Town until the moratorium has expired.

(c). The temporary moratorium set forth in this Ordinance shall expire prior to the termination date set forth herein if the Town Council enacts an ordinance addressing the matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017.

SECTION 6. IMPLEMENTING ADMINISTRATIVE ACTIONS.

(a). The Town Administrator is hereby authorized and directed to implement the provisions of this Ordinance and with regard to the implementation of the matters regulated by the provisions of Committee Substitute for Committee Substitute for House Bill 687 passed by the Florida Legislature during the recently ended 2017 Legislative Session and approved by the Governor with an effective date of July 1, 2017 by the promulgation of rules and the development and usage of forms and processes all as may be deemed necessary or appropriate by the Town Administrator.

(b). The Town Administrator is also hereby authorized and directed to generally implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the provisions of this Ordinance in accordance with controlling law as such officer may deem appropriate under the Town of Malabar Charter.

SECTION 7. SAVINGS. The prior actions of the Town in terms of the matters relating to the regulation of rights-of-way, as well as any and all related matters, are hereby ratified and affirmed.

SECTION 8. CONFLICTS. All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 9. 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 10. EFFECTIVE DATE. This Ordinance shall take effect immediately upon passage and adoption.

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

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

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

By: TOWN OF MALABAR

Mayor Patrick T. Reilly,
Council Chair

(seal)

1st Reading: 8/7/17
2nd Reading: 8/21/17

ATTEST:

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

Approved for Legal Sufficiency:

Karl Bohne, Jr.
Town Attorney

**TOWN OF MALABAR".
AGENDA ITEM REPORT**

AGENDA ITEM NO: 6
Meeting Date: August 17, 2017

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

SUBJECT: Resolution 15-2017 Supporting the Concept for SR 514 Widening

BACKGROUND/HISTORY:

Information was provided to Council in April re: roundabouts and the expanded incorporation of them in FDOT projects throughout the State. The presentation that was done in April and the one done at the July 17 were both available at Town Hall and on the website. Residents that were at the April meeting and had experience with them spoke in favor of their use "if done properly".

T&G wanted a trail crossing at Marie Street for the Sandhill Trail running north / south in that area. They also spoke in support of the multi-use trail on the north side of Malabar Road between Marie Street and Malabar Woods Boulevard, as did the Malabar Parks and Recreation Board and Council.

Aitkens Engineering was chosen by FDOT to prepare the Preliminary Design and Engineering (PD&E) Concept and has prepared multiple proposals for Malabar with mixed reception. Mr. Victor Poteat of Aitkens Engineering presented the latest concept on RTCM July 17, 2017 and requested a resolution of support to present at future meetings with the:

- Space Coast TPO
- EEL SMC Committee
- DEP Acquisition and Restoration Council (ARC) in Tallahassee
- Brevard County Board of County Commissioners

FINANCIAL IMPACT: none

ATTACHMENTS:

- Reso 15-2017

ACTION OPTIONS: Council Adoption of Reso 15-2017

RESOLUTION 15-2017

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING A REQUEST FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION TO SUPPORT A CONCEPT FOR THE WIDENING OF SR 514, MALABAR ROAD FROM THE WESTERN BOUNDARIES OF THE TOWN TO U.S. HIGHWAY 1 (SR 5) IN THE TOWN OF MALABAR AND TO PROVIDE ONGOING MAINTENANCE OF THE MULTI-USE TRAIL INCLUDED IN THE RECOMMENDED ALTERNATIVE FROM MALABAR WOODS BOULEVARD TO MARIE STREET; PROVIDING FOR DISTRIBUTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, SR 514 Malabar Road is a State Road that intersects the Town of Malabar from Highway 1 westward to the Town limits, approximately three miles; and,

WHEREAS, SR 514 Malabar Road is used as a major collector and evacuation route and is used anytime there is an incident on I-95 requiring alternative routing; and

WHEREAS, SR 514 Malabar Road will require unique design in the widening to avoid negative effects on future commercial growth and the active Disc Golf course; and

WHEREAS, the recommended alternatives support the Town's desired goals to limit impacts to private property and the Disc Golf Course by utilizing lands within the Malabar Scrub Sanctuary for improvements to Malabar Road; and,

WHEREAS, FDOT has acknowledged since the 1980's the need to widen SR 514, within Malabar jurisdiction and the Town has requested assistance from FDOT in writing since 2004 for traffic calming improvements, a Trail Crossing at Marie Street and expedited construction of the intersection improvements at Corey and Weber Roads to alleviate current dangerous conditions; and

WHEREAS, the Florida Department of Transportation has asked for input from Malabar Town Council on proposed concepts including a four-lane alternative, a two-lane alternative, multi-use trail on the north side of Malabar Road, and the use of roundabouts; and,

NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF MALABAR OF BREVARD COUNTY, FLORIDA that;

SECTION 1. Findings:

1. The **WHEREAS** statements are true and correct.
2. The Town of Malabar supports the recommended alternative of SR 514 Malabar Road, including updated sections from Weber to Marie Street as follows:
 - a. Weber Road to Corey Road: Four-lane suburban typical section that features two (2) vehicular lanes in each direction of travel, a bike lane in each direction of travel, and sidewalks on both sides; and

- b. Corey Road to Marie Street: two-lane Rural typical section that features one (1) vehicular lane in each direction of travel, paved shoulders on both sides, and a multi-use trail on the north side; and
 - c. Installation of Trail Crossing at Marie Street in alignment with the Sandhill Trail; and
 - d. Roundabouts at the intersections of Malabar Road with Weber Road and Corey Road.
3. The Town of Malabar will provide ongoing maintenance to the paved multi-use trail on the north side of Malabar Road from Malabar Woods Boulevard to Marie Street.

SECTION 2. Distribution:

The Town Clerk is directed to send copies of this resolution to FDOT, the City of Palm Bay, Town of Grant-Valkaria, Brevard County, and the Space Coast League of Cities and solicit support for our request to FDOT.

SECTION 3. Severability.

The provisions of this Resolution are declared to be severable and if any section of this Resolution shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections of this Resolution but shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.

SECTION 4. Conflict.

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

SECTION 5. Effective Date.

This Resolution shall take effect immediately upon passage.

This 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 Richard Kohler	_____

This Resolution was then declared to be duly passed and adopted this 7th day of August, 2017.

By: TOWN OF MALABAR

Mayor Patrick T. Reilly,
Council Chair

(seal)

ATTEST:

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

Approved for Legal Sufficiency:

Karl Bohne, Jr.
Town Attorney

RTCM 08/07/2017

AGENDA ITEM #

L 7 - Miscellaneous

Approve 416' of Corey Road
(north end)

Requested by
Christopher and Jan Lusardi

Memo by Morris Smith,
Town Engineer

To Whom it my concern ,

My wife(Jan Lusardi) and I(Christopher Lusardi) have recently went into contract with a piece of land in Malabar off Corey rd. The road to the property ends at the front part of the property and does not continue as asphalt. However, it continues as a dirt road to the Malabar sanctuary. We are hoping that since the town of Malabar uses the dirt road to excess the sanctuary for maintenance and for the parking of people who use the sanctuary for its trails and beautiful scenery that we will be able to build on the property without the added cost of adding a asphalt road as its not something that is in our budget. We have been looking in the town of Malabar for land for quite some time and really hope we will be able to work something out.

Thank you for your consideration,

Chris Lusardi

TOWN OF MALABAR
MEMORANDUM

It is my recommendation that the property owner provide to the Town the following:

1. A Hold Harmless agreement stating that if at some point in time the stormwater runoff from the westerly portion of this section of Corey Road becomes problematic, the property owner shall, at their expense, make corrective actions in constructing a stormwater swale that moves this runoff to the south by attaching their new swale to an existing swale south of this property,
2. Dedicate a strip of land to the Town for additional right-of-way for Corey Road, a minimum of 5 feet in width, measured perpendicular to the east property line of the subject parcel and
3. Provide three (3) soil compaction/density testing of the existing roadway to provide evidence that this section of Corey road has received enough proof rolling that it meets the Town's compaction requirements. Those requirements are that the soil be a minimum of 8 inches thick, compacted to 98% of maximum density Per AASHTO T-16 with a minimum Load Bearing Ratio (LBR) of 40. The locations for these compaction tests shall be in the approximate centerline of the unimproved roadway, 70 feet, 210 feet and 350 feet north of the north limits of the existing asphalt surface for Corey Road.

Very Truly Yours,

Digitally signed by James M Smith Jr
DN: C=US, O=IdenTrust ACES Business
Representative, OU=JAMES MORRIS SMITH
JR PE PSM LLC, CN=James M Smith Jr,
OID.0.9.2342.19200300.100.1.1=A01097C000
00144C2E80633000A6CA
Reason: Acceptance of the North 416 of Corey
Road
Location: Town of Malabar, Brevard County,
Florida
Date: 2017-08-01 10:35:50



James Morris Smith, Jr., PE
Town Engineer
Florida License No. 45392

RELEASE, INDEMNITY AND HOLD HARMLESS

THIS AGREEMENT (Agreement) is dated August ____, 2017 and is between TOWN OF MALABAR, a Florida municipal corporation (MALABAR) and Christopher and Jan Lusardi, husband and wife (INDEMNITORS)

Agreement

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency is hereby acknowledged, the parties agree as follows:

INDEMNITORS agree to make corrective actions if the stormwater runoff from the westerly portion of Corey Road becomes problematic by constructing, at their own expense, a stormwater swale that moves excessive runoff from the westerly portion of this section of Corey Road to the south by attaching their new swale to an existing swale south of this property.

In consideration the INDEMNITOR, their heirs, successors, assigns, Trustees, guardians, or personal representatives and anyone claiming by and through INDEMNITOR hereby absolutely releases and forever discharges MALABAR and its respective council members, employees, agents, representatives, attorneys, administrators and successors from any and all claims, damages, awards, judgments, expenses, actions, causes of actions, penalties, proceedings, injuries, attorney fees, losses and liabilities of any nature liquidated or un-liquidated, known or unknown for any losses, damages, claims, actions, causes of actions, legal or equitable, concerning the acceptance of this portion of roadway.

Furthermore, INDEMNITOR agrees to indemnify MALABAR from any claims, including attorney's fees and costs, by any third party as a result of MALABAR agreeing to remove said illegally parked and untagged vehicle.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seal the date written below.

INDEMNITOR

TOWN OF MALABAR

Christopher Lusardi

Mayor Patrick T. Reilly, Council Chair

Date: _____

Date: _____

Jan Lusardi

Date: _____

Record & Return To:
Town of Malabar
2725 Malabar Road
Malabar, Florida 32950

RIGHT-OF-WAY DEDICATION

THIS INDENTURE made this ____ day of ____, 2017 between Christopher and Jan Lusardi (H/W) property owner, whose address is _____, party of the first part, hereinafter referred to as "Grantor," and **The Town of Malabar**, a municipal corporation organized under the laws of the State of Florida and situated in Brevard County, Florida, 2725 Malabar Road, Malabar, FL 32950, party of the second part, hereinafter referred to as "Grantee,"

WITNESSETH:

That the Grantor, for and in consideration of other valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, dedicate and convey unto the party of the second part, its successors and assigns, the following described land, lying and being in the Town of Malabar, County of Brevard, State of Florida, to-wit:

A strip of land five (5) feet in width along the Eastern edge of Parcel 14 in Township 28 Range 37 Section 35 (28-37-35-00-14) also will be known as 1150 Corey Road, Malabar Florida 32950

for public road right-of-way purposes, drainage purposes, utility purposes and any other public purpose.

The Grantor hereby covenants with the Grantee that the Grantor is lawfully seized of said land in fee simple, that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the Grantor has executed this instrument on the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness

Grantor: Signature

Witness

Christopher Lusardi

Grantor: Printed Name

STATE OF Florida
COUNTY OF Brevard

BEFORE ME, the undersigned authority, personally appeared and is personally known to me, or who produced _____ as identification, and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this _____ day of _____, 20__.

NOTARY PUBLIC
State of Florida

My Commission Expires:

Witness

Grantor: Signature

Witness

Jan Lusarid

Grantor: Printed Name

STATE OF Florida
COUNTY OF Brevard

BEFORE ME, the undersigned authority, personally appeared and is personally known to me, or who produced _____ as identification, and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this _____ day of _____, 20____.

NOTARY PUBLIC
State of Florida

My Commission Expires:



Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

PROPERTY DETAILS

Account	2846110
Owners	Barr, Emily P Trustee
Mailing Address	4770 S US Highway 1 Grant FL 32949
Site Address	Not Assigned
Parcel ID	28-37-35-00-14
Property Use	9909 - Vacant Residential Land (Single-Family, Unplatted)
Exemptions	None
Taxing District	34Z0 - Malabar
Total Acres	5.98
Subdivision	N/A
Site Code	0001 - No Other Code Appl.
Plat Book/Page	N/A
Land Description	Lot 17 Ex South 907.5 Ft Of Pb 1 Pg 164

VALUE SUMMARY

Category	2016	2015	2014
Total Market Value	\$94,730	\$94,730	\$94,730
Agricultural Market Value	\$0	\$0	\$0
Assessed Value Non-School	\$94,730	\$94,730	\$94,730
Assessed Value School	\$94,730	\$94,730	\$94,730
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$94,730	\$94,730	\$94,730
Taxable Value School	\$94,730	\$94,730	\$94,730

SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
03/05/2015	--	WD	Vacant	7322/0880
05/06/2003	--	QC	Vacant	4906/2754
12/14/2001	\$120,000	WD	Vacant	4486/2269
04/24/2001	--	QC	Vacant	4333/3497
09/30/1994	\$12,000	WD	Vacant	3427/1753
12/20/1977	\$120,000	WD	--	1827/0070
04/01/1973	\$9,023,000	PT	--	1334/0218

BUILDINGS

No Data Found

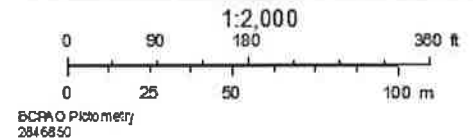
North
Brevard County Property Appraiser

ENTRANCE
to Cameron
Preserve



July 17, 2017

SOUTH
END OF
PAVED
ROAD



For illustration only. Not a survey. Map layers may not precisely align.
© BCPAO 2015

● 2/21/17
blackberry, smilax

WC fringe: sorghum, red, maid, redroot

sand pine, slash, WM, Q. hem, (Q. myrt.), S.l.o., broomsdg, st. And. wort, milk pea, sc. holly, couple warts, (WM)

WL: VC Fern, broomsdg, bushy bluestem, redroot over LMOBS YEG, blucher, Bachelor's buttons



slash palmetto, galberry, broomsdg, grape, bracken, winggrass, starflower, sh. lonic, sh. blue

Soils near entrance = 2 1/2" dense SOB's over dense mol/clay matrix over med. grey loamy sand

CW, BP, PW, WM, SW. fern, VC fern, royal fern, live oak, water lily
Hydro - shows up to 3' standing H₂O

gopher apple

WL, <0.10 acre
Sandwd., blue mail, broomsdg, blucher, meadow beauty, redroot, YEG, cantella
Thin film of mucky surface texture

slash, CP, sand pine, Q. hem, BF Bracken, broomsdg, grape, S.l.o., sc. palmetto, bidens