



**TOWN
OF
MALABAR**

AGENDA PACKET

August 21, 2017

Council Meeting
7:30 PM

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, AUGUST 21, 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 8/10/17**
Special Town Council Meeting Minutes 8/14/17
Budget Workshop Minutes 8/15/17
Exhibit: Agenda Report No. 1
Recommendation: Request Approval
- E. **ATTORNEY REPORT:**
- F. **STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF**
- G. **PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) Three (3) Minute Limit per Speaker.
- H. **PUBLIC HEARINGS/SPECIAL ORDERS: 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 MORATORIUM 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: MORATORIUM 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 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 MATTERS REGULATED BY THE PROVISIONS OF COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL 687 IN THE PUBLIC RIGHT-OF-WAYS 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

UNFINISHED BUSINESS/GENERAL ORDERS

ORDINANCES FOR FIRST READING:

RESOLUTIONS: 0

MISCELLANEOUS:

I. DISCUSSION/POSSIBLE ACTION:

6. IMPACT FEES FOR MALABAR – INFRASTRUCTURE AND PARKS AND RECREATION

Exhibit: Agenda Report No. 6

Recommendation: Request Discussion

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

K. REPORTS – MAYOR AND COUNCIL MEMBERS

L. ANNOUNCEMENTS: (1) Vacancy on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board; (1) Vacancy on Trails and Greenways.

M. 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 21, 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 – 8/07/2017
- Special Town Council Meeting – 8/14/17
- Budget Workshop Meeting - 8/15/17

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 08/7/2017, 8/14/17 and 8/15/17 meetings

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
AUGUST 07, 2017 7:30 PM

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

A. CALL TO ORDER:

Acting Chair, Steve Rivet called the meeting to order at 7:30 pm. CM Kohler led the prayer and pledge.

B. ROLL CALL:

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

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

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: CM Mahoney to table # 2 and 3 and 7 and under Item . M. remove "possible action" from the title. Chair explained she can request removal at this point but not to table until the item is up on the agenda. Chair asked for Council comment on the removal. No consensus to remove. Chair received a request to remove SR514 Resolution under Agenda Item 6. TA said the new FDOT representative got the Resolution 7-10 days ago, The removal from this agenda is at the request FDOT, not Aitkens. Chair asked - does Council agree. CM Korn is not in support of the resolution. Consensus to remove until further direction.

Chair asked to move # 7 up under item J (after public comments). No objection.

D. APPROVAL OF THE MINUTES:

1. **Regular Town Council Meeting Minutes 7/17/17**
Town Council Special & Workshop Mtg Minutes 7/24/17
Exhibit: Agenda Report No. 1
Recommendation: Request Approval

MOTION: CM Kohler / CM Korn to approve RTCM minutes of 7/17/17.

Discussion: CM Mahoney said for the public the corrected minutes should be in the original council packet. Chair suggested she bring it up under Council reports.

Vote: Ayes, 5; Nay, 0

MOTION: CM Ball / CM Kohler to approve Special and WS minutes of 7/24/2017.

Discussion: CM Mahoney asked for her request under reports to show that the request for the schedule was hers not CM Koehler's. Clerk said that it was CM Kohler that said perhaps after the work was performed a report could be posted.

Vote: All Ayes.

E. BCSO REPORT: none

F. ATTORNEY REPORT: none

G. PRESENTATIONS: Chair presented Letters of Commendation to Fire Dept Personnel

Chair read Letter to Chief and presented to him. (attached) Acting Council Chair then asked the Chief to call his personnel up to present the Letters of Commendation. The Commendations were presented and pictures were taken by a volunteer in the audience. Council and audience was very thankful, supportive and grateful for the response from the Malabar Fire Department on this tragic incident.

Fire Chief then explained the circumstances of such a tragic fire and thanked Council for recognition of the efforts of the Malabar Fire Department responders.

H. BOARD/COMMITTEE REPORTS:

Trails and Greenways Committee: Drew Thompson short presentation. Will be doing something in the south as presented at earlier meetings. Will be talking with Doug to give access to Jordan scrub. Working on concept. Brevard County has park land north of Valkaria Road.

Planning and Zoning Board: Liz Ritter

Still working on the sign code. They had to go through the definitions first; then go back to the table.

Park and Recreation Board: Hans Kemmler

Hans informed them about the memorials and have gone through several suggestions. Low maintenance and style. They had a presentation by Formmasters in Deland. Rick Basso came and left example of poured concrete polished. 4 x 8 and 4" thick. They don't have all the details and price ranges. \$75 per square foot. If they cast it and we pick it up it could be for 3K. Will have some options with a lower and higher cost. With them pouring the columns.

Things are going well at the golf disc sanctuary.

Re: Huggins Park: they have gone through so many ideas that they may want to sell the land and use the money for parks and recreation.

TA said hopefully he will have two of the shade sails up over the playground by the end of the year. The decision has been made to have four separate shade sails so they will have a greater chance of surviving high winds. CM Korn asked regarding the memorial wall, would the existing memorials be included? Yes.

I. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF

ADMINISTRATOR: TA - nothing

CLERK: The proposed Stormwater fee increase advertisement has run in the paper and the individual notices were mailed out as required by statute so Council can hold a Public Hearing on August 14, 2017 regarding the increase. There was a formatting issue when the dataset was inserted into the Notices mailed out that caused a "1" to be printed under "commercial" on all residential notices. It in no way had any effect on the bill classification. We have appreciated all the calls from property owners that requested clarification. A resident on Sandy Creek Lane delivered a request to speak at the 8/14/17 public hearing. Council was copied on the request. Also, another call resulted in a request for a stormwater credit for their stormwater system and that will probably be successful.

FIRE CHIEF: Went over July report – FF1 class will be offered. Applied for the SCOTT Paks for grants. That is paid for by DOF at 100%.

Chief said regarding the question that came up at the Budget WS he wanted to provide the background for the increase under "radios" in the budget. The County is going to digital radios. They have 14 portable radios. He only has three that are digital. The rest are analog. They must rely on the radios. The county will switch over entirely in 2019 or 2020. The radios in the vehicles can be modified.

J. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those

items come up. Public comments do not require a Council response. (Speaker Card is Required) Three (3) Minute Limit per Speaker.

Speaker’s Card:

Liz Ritter: 2860 Orange Avenue. Rented the park on 7/22 and the grass is over knee high. As a taxpayer, would like to request that the park be mowed more than once a month. TA said the schedule is once a month; had the Town received the right permit it would have been taken care of. Ms. Ritter said even if you are just walking your dog – if it is a foot deep you will lose your dog..

CM Korn said he was contacted by Ms. Ritter. CM Korn suggested in the future she use him as the expeditor. In her park, they make sure it is maintained. CM Korn said communication is a wonderful thing. Ms. Ritter said the advertisement was on the Town website.

Chair said make sure the appropriate permit is issued. If you are paying to rent the park...Chair gaveled point of order.

TA said he got a phone call on Saturday morning asking why it was not mowed.

CM Korn asked if a private person bring their mower and mowed it was that allowed. Don't think our insurance would cover an accident. Ms. Ritter said when Ricky called the TA he said it was ok to mow it.

(Post Meeting Note: TA clarified the Saturday phone call (attached to minutes)

Agenda Change: Move Agenda Item #7 here:

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

Exhibit: Agenda Report No. 7
Recommendation: Request Action

Chair asked for TA to give introduction. As stated in the request by the applicants they wish to purchase the parcel and build a home and would like Council to accept the portion of roadway used daily to get to the Cameron Preserve. The Engineer has spelled out some of his requirements to meet Town Code and protect the Town from future financial responsibility. The roadway dead ends into the Cameron Preserve which is a sanctuary dedicated in perpetuity so very unlikely a right-of-way would ever be platted to go north to Palm Bay. If Council approve this tonight, then the applicant has agreed to do the Hold Harmless and the right-of-way dedication. They will also perform the compaction tests and submit the results to the Town for evaluation by the Town Engineer.

MOTION: CM Korn / CM Kohler to approve 416' feet of Corey Road between the end of the pavement north to the entrance to Cameron Wilderness Preserve with the conditions stated by the Engineer to be met:

- Dedication of 5' to the Town for additional right-of-way
- Compaction Tests that meet or exceed Town requirements
- Execution of the Hold Harmless Agreement covering potential Stormwater problems.

VOTE: All Ayes.

- K. PUBLIC HEARINGS/ UNFINISHED BUSINESS/GENERAL ORDERS: None
- L. 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

Speakers Card: Karlene Conroy handed out a rebuttal to the Attorney's response comments. One theme emerged – no one person can direct a staff member. She stated it will be a deterrent for other willing to serve. Her written rebuttal will be attached to minutes.

CM Mahoney made motion to change this to discussion. Motion died for lack of 2nd. CM Korn said it needs to stay on. He has been on Council or a board for 17 years. He said Ms. Conroy's letter used the word "asked" not demand. Adopting this ordinance is a protection for the Town. If it keeps someone from volunteering to serve, then they have a different agenda than what is best for the Town.

Speakers Card: Brian Vail, He is in favor of this. It is unfortunate that we have draft this – it gives accountability. You should all get along as a group and it protects the image of Council.

MOTION: CM Korn / CM Kohler to approve first reading of Ord 2017-06.

Discussion: CM Korn took Ms. Conroy's concerns very seriously. CM Mahoney said June 19, TA sent out an email that was not in the minutes.

Atty Bohne said there are clear guidelines on what is confidential. Can't put label of privileged so if it does not fit one of those categories it is disclosable. He only can think of two cases where this would have been applicable. He wishes it wasn't necessary.

CM Ball: He said for the reasons stated by CM Korn, if it has only happened two times, why is the ordinance necessary? You are creating another level of bureaucracy. The ordinance is very subjective. What is adequate time? He is against it. He doesn't see it as serving any useful purpose. CM Kohler said he is supportive of this. This would keep everything moving forward.

Atty said look for more detail. Atty said identify the issue. That is up to Council to figure out; not his office or Town staff.

CM Mahoney asked how much time it took to draft this and put it in the form of an ordinance.

ROLL CALL Vote: 1) CM Ball, Nay; CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried 3 to 2.

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

MOTION: CM Korn / CM Kohler to approve first reading of Ord 2017-07.

Discussion: CM Mahoney – same reasons she opposed the previous ordinance.

ROLL CALL Vote: CM Ball, Nay; 1) CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried 3 to 2.

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

MOTION: CM Ball / CM Mahoney to approve first reading of Ord 2017-08.

Discussion: CM Ball said move in this direction to protect the town until all the regulations are drafted. If we choose to regulate them we will have to modify our code. Also, have to determine if our regulations are grandfathered in since it was adopted before the bill passed. Could also ban them outright. Or treat them same as pharmacies. If you want to switch this from a moratorium to a ban it would require going back before Council.

Speaker Card: Karen Moser: Don't have a problem with moratorium but if you want to extend it. Would it have to go back before Council. Yes. Proactively get a comment on this: fine if you want to amend regulations to treat them the same as pharmacies. Seems cruel to burden sick patients with driving far distances. Malabar wants low taxes but they also want to attract businesses. Full statement is attached

CM Korn: majority of people voted to allow this. During 2016 he saw ads in local publications that he was growing and selling it in Malabar. Yes, you could do it same as pharmacies or ban it or grant a temporary moratorium while getting more information. Morgan is suing the State. Depending the ruling on that case may also change the regulations. Chair said this moratorium would give them until Jan 8, 2018.

ROLL CALL Vote: CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; 1) CM Korn, Aye; CM Kohler, Aye. Motion carried 5 to 0.

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

Speakers Card: none

MOTION: CM Kohler / CM Mahoney to approve first reading of Ord 2017-09.

Discussion: Atty said there is some allowance for local regulation but must review the law to see how much control local government will have over

CM Korn said the wireless. Refers to the green boxes. Is this part of the State's attempt to remove home rule and legislate from Tallahassee?

CM Mahoney asked if we can do research on permit fees; can we limit it to certain roads. No.

ROLL CALL Vote: 1) CM Ball, Aye; CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye;
1) CM Kohler, Aye. Motion carried 5 to 0.

RESOLUTIONS: 1 tabled

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.~~

MISCELLANEOUS: 2

**7. Action on Request to Accept 416 feet of Corey Road (north end)
Moved to under Item J.**

M. DISCUSSION / POSSIBLE ACTION:

- Upcoming Public Hearing on 8/14/17 at 7:30PM re: Stormwater Fee Increase from \$36 to \$52 for three years and then a further increase to \$64 in 2020 and thereafter.
- Upcoming Public Hearings being prepared for advertisement at P&Z and Council re: FLUM

Clerk is preparing the text and map to get the notices mailed out and the legal advertising done.

N. PUBLIC COMMENTS: none
Attorney leaves.

O. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Dist. 1: CM Ball: He is bringing this up because he has got calls. KellWill (Route 1 Motorsports) agreed to have the sign at a 30-sec streaming limit. What is a realistic – don't put handcuffs on him. See what he had agreed to at the last meeting.

CM Ball also wanted to relay a recent conversation with the father of a new volunteer at the Fire Department. The father was delighted with the way the Chief mentored his son and was amazed with the value received back to the son. It was greatly appreciated.

CM Mahoney also was relieved that the resolution was pulled. Mr. Poteat wanted Malabar approval on their plan before taking his plan to FDOT and TAC.

CM Dist. 2: CM Mahoney: Suggest the corrected minutes go up with the original package for the public's benefit. She requested a copy of the most recent payroll register.

CM Dist. 3: CM Rivet: Got some input from citizens – we haven't done the budget resident review committee. It was a mistake to not involve the citizen in that process. We need to be as much of the experts from the citizens – having the board encourages them to participate. For next year, we should form a resident's budget review board. CM Korn make sure what we do is well discussed with the residents.

CM Dist. 4: CM Korn: Action on the Town's desires on what we want done re: SR514. They are not clear as a council on any of the issues related to that. Don't want to be railroaded into saying something they do not intend. Sand Hill Crane junior was killed by a careless driver. Linda took it to a vet and it died. Put the word out. People need to be careful. Would like to ask for increased enforcement in this area. That is what we pay the BCSO for. Make sure what is done by Council adds to the comfort and safety of our residents. CM Ball is in total agreement. Every time they give us a presentation it is changed. There is a triangle in front of Krieger's that will be a lake. There is precious little commercial land now.

CM Dist. 5: CM Kohler: Also wanted to give a great thanks to FD and their efforts.
Mayor: excused

O. ANNOUNCEMENTS:

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

P. ADJOURNMENT: CM Kohler e

MOTION: CM Korn /

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 9:20 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 8/21/2017

ADDENDUM to RTCM MINUTES of AUGUST 7th , 2017

Attached please find a Notice of Cancellation or Nonrenewal for the insurance covering the Malabar Community Association. Ostensibly, this insurance (liability policy?) was in effect for the intended date of Saturday, July 22nd 2017. The Town was not furnished a certificate of insurance prior to the event, nor at any time did the Town receive an insurance certificate.

Friday, July 21st 2017 (the evening before the Activity) after normal business hours I received a call on my cell phone from an individual purportedly associated with the MCA (Ricky Bisnath) asking if the gate allowing access to the park could be unlocked for the event on Saturday and could the Park be mowed. I was told that he had a certificate of insurance naming the Town as a third party insured. My response was that if they wanted to mow the area in question and had insurance they could proceed with mowing. Mention was made that the activity permit was incorrect as the permit MCA held was for a family activity not a Special Activity Permit and that for a Special Activity the park would have been mowed in a timely fashion. He was also told that the Gate would be open by 8:00 am on the day of the Activity.


For Councils note, under ARTICLE III. Special Activity Permits in the Town Codes starting with Sec. 10-256 ending with 10-264 requirements for this type of park use are far more stringent than for a family activity, including approval by the Council.

NOTICE OF CANCELLATION OR NONRENEWAL

<p style="text-align: center;">INSURANCE COMPANY</p> <p>FEDERATED NATIONAL INSURANCE CO. 14050 N.W. 14TH STREET # 180 SUNRISE, FL 33323-0000</p>	<p>KIND OF POLICY General Liability</p> <p>POLICY NO. HM-0000016051-00</p> <p>CANCELLATION OR EXPIRATION WILL TAKE EFFECT AT: 9/23/17 (DATE) 12:01AM (HOUR STANDARD TIME) 8/07/17</p>
<p style="text-align: center;">NAME AND ADDRESS OF INSURED</p> <p>MALABAR COMMUNITY ASSOCIATION 346 CAMELOT AVENUE MALABAR, FL 32950-0000</p>	<p>ISSUED THROUGH AGENCY OR OFFICE AT: 11276/000 KIM JONES AGENCY, INC.* KIMBERLY JONES WHITAKER 1003 S WASHINGTON AVE TITUSVILLE, FL 32780-0000</p>
<p style="text-align: center;">NAME AND ADDRESS OF ADDITIONAL INSURED / MORTGAGEE HOLDER / LIENHOLDER</p> <p>TOWN OF MALABAR 2725 MALABAR ROAD MALABAR, FL 32950</p>	

CANCELLATION	<input type="checkbox"/>	<p>You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with the law, that your insurance will cease at and from the hour and date mentioned above for the reason(s) stated in the "Important Notices" section below. See the "Important Notices" below for other information that may apply.</p>
	<input checked="" type="checkbox"/>	<p>You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with the law, that your insurance will cease at and from the hour and date mentioned above for the reason(s) stated in the "Important Notices" section below. FL only You are permitted by law to appeal this cancellation. An appeal must be filed no later than 20 days before the effective date of cancellation set forth in this Notice. Forms for such appeal and the regulations pertaining thereto may be obtained from the offices of the Department of Insurance. The Department of Insurance does not have the authority to extend the effective date of cancellation; therefore you should obtain replacement coverage prior to the effective date of cancellation. (Appeals is not permitted in the case of cancellation for nonpayment of premium.) See the "Important Notices" below for other information that may apply.</p>
NON-RENEWAL	<input type="checkbox"/>	<p>You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with the law, that the above mentioned policy will expire effective at and from the hour and date mentioned above and the policy will NOT be renewed for the reason(s) stated in the "Important Notices" section below.</p>
IMPORTANT NOTICES		<p>Reason(s) for cancellation, nonrenewal of policy (reason(s) stated only if above marked item indicates such.) COMPANY REQUEST DOCS NOT RECEIVED</p>

<input type="checkbox"/>	<p>TO LIENHOLDER:</p>	<p>You are hereby notified that the agreement under the Loss Payable Clause payable to you as Lienholder, which is a part of the above policy, issued to the above insured is hereby canceled or nonrenewed in accordance with the conditions of the policy, said cancellation or non renewal to be effective on and after the hour and date mentioned above.</p>
<input type="checkbox"/>	<p>TO MORTGAGEE:</p>	<p>You are hereby notified that the agreement under the Loss Payable Clause payable to you as Mortgagee, which is a part of the above policy, issued to the above insured is hereby canceled or nonrenewed in accordance with the conditions of the policy, said cancellation or non renewal to be effective on and after the hour and date mentioned above.</p>
<input checked="" type="checkbox"/>	<p>TO ADDL. INSURED/CERTIFICATE HOLDER:</p>	<p>You are hereby notified that the agreement under the Loss Payable Clause payable to you as Additional Insured/Certificate Holder, which is a part of the above policy, issued to the above insured is hereby canceled or nonrenewed in accordance with the conditions of the policy, said cancellation or non renewal to be effective on and after the hour and date mentioned above.</p>

<p>PRODUCER / AGENT: 11276/000</p> <div style="text-align: center;">  </div>	<p>(If notice of cancellation or nonrenewal is mailed to the Insured, Lienholder or Mortgagee, complete the following.)</p> <p>I hereby certify that I personally mailed in the U.S. Post Office, at the place and time stamped hereon, a notice of cancellation or nonrenewal to the insured, lienholder or Mortgagee, an exact carbon copy of which appears above, and at said time received from the U.S. Postal Service the receipt made a part hereof or attached hereto.</p> <p>Signed this <u>05</u> day of <u>August</u> 20<u>17</u></p> <p>Signature <u>J. GORDON JENNINGS III</u></p>
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SWAP MEET & TRUCK SHOW

BUY - SELL - SWAP - TRADE!

Music By



Free to Shop!
Free to Browse!



Saturday
July 22, 2017
3:30 - 7:30 PM

SWAP MEET

Home Made Wares,
Artwork, Crafts,
Produce/Food,
Auto Parts,
Tools & Equipment,
Garage Sale Items

TRUCK SHOW

Come See
Giant Custom Trucks!
Trophies!
Buy, Sell, Trade, Parts &
Accessories, Raffles,
& more!

PRE-REGISTER ONLINE by 6 PM July 21st

www.malabarcommunityassoc.com

All Vendors & Trucks must be Registered & Paid by 2:30 PM Day of Event.
Payment is Due at Day of Event; We can only accept Cash or Checks.

Swap Meet & Vendor Registration

A 10 x 10 space is \$5 when you Pre-Register, \$10 Day of Event
Bring your own Table, Chair, Pop Up Tent

Truck Show Registration

\$10 when you Pre-Register, \$15 Day of Event

MALABAR COMMUNITY PARK

1840 Malabar Road, Malabar, FL 32950

RE: Objection to Ordinances 2017-06 & 2017-07

kbohne@fla-lawyers.com

Mon 8/7/2017 10:18 AM

To: Laura Mahoney <cmdist2@townofmalabar.org>;

Regardless of any "Code of Conduct" that may or may not be adopted by the Town, all public officials are bound by the Florida Code of Ethics. That being said the code of ethics does not cover all the areas encompassed by the 2 proposed ordinances.

Karl W. Bohne, Jr.
Schillinger & Coleman, P.A.
1311 Bedford Drive
Melbourne, FL 32940
321-255-3737 Telephone
321-255-3141 Facsimile

Office Hours:

8:30 a.m. to 5:00 p.m. Monday thru Thursday

8:30 a.m. to 12 Noon on Friday

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From: Laura Mahoney [mailto:cmdist2@townofmalabar.org]

Sent: Monday, August 07, 2017 9:54 AM

To: kbohne@fla-lawyers.com

Subject: Fw: Objection to Ordinances 2017-06 & 2017-07

Your thoughts?

From: Karlenec <karlenec@cfl.rr.com>
Sent: Sunday, August 6, 2017 8:01 PM
To: Grant Ball; Laura Mahoney; Steve Rivet; Dick Korn; Richard Kohler
Cc: Pat Reilly
Subject: Objection to Ordinances 2017-06 & 2017-07

Our Objection to:

- ORDINANCE 2017-06- 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; ETC.
- ORDINANCE 2017-07 – AMENDING CHAPTER 2 TO PROVIDE FOR BOARD/COMMITTEE CONDUCT – 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 2-16; PROVIDING FOR DEFINITIONS; PROVIDING FOR A BOARD AND COMMITTEE CODE OF CONDUCT AND PENALTIES FOR VIOLATION, ETC.

First reading August 7, 2017, Town Council Meeting.

At the June 5th TCM meeting, the mayor, prompted by the jokes he'd heard about Palm Bay's problems at the Civilian Military & League of Cities meetings he attends, suggested to council that they might want to discuss signing a Code of Conduct for Council at the next meeting. The mayor said it was already written, he just changed Palm Bay to Malabar. CM Korn said to make it available at the next meeting.

Most of you on council willingly signed this document prior to the June 19th meeting with very little discussion *at the meeting*. You overlooked serious problems with this Code of Conduct document and then agreed to turn it into an Ordinance.

Now, with the Agenda for the August 7th meeting giving notice of First Reading for 2 Ordinances for Amendments to Chapter 2, we discover that Board and Committee members will also be subject to an Ordinance. Did we miss something between that council meeting and this action? When was this decided?

1) First objection: we are not Palm Bay so why are we emulating their doctrines or policies?

2) Why are these amendments and ordinances needed when Conduct is already covered in:

- Part 1 of Charter, Article VI – Sec. 6.02. - Conduct of Officials in Office

The officials of the Town of Malabar will [be] held to standards in office set forth in the Florida Statutes as required by law. These statutes hold officials statewide to standards of conduct concerning conflict of interest, ethics and morality as it affects their performance of duty in office. Ramifications for violations of these standards are set forth in the Florida Statutes. (*Ord. No. 95-3, § 1, 7-17-95; Amd. of 3-25-03*)

3) These ordinances jeopardize and threaten your council positions as well as board and committee positions.

#2 a) affirms that "the proper statutory and Town Charter role of the members of the Town Council... is to act collectively, not individually, to set and/or revise and/or to apply the town's governing policies and that the TA and staff administer such policies."

- This conflicts with a council member's ability to disagree with any given policy.

- A majority vote of council sets policy under town law so mandating that council "act collectively" is a contradiction.
- Charter Part 1, Article II, Section 2 covering Council says nothing about members having to act collectively.

#2 b) Instructs council members not to intrude into daily operations of the town administrator or undermine the TA's lawful authority.

- this contradicts Chapter 2, Article IX – Town Administrator, Sec. 2-300 Office of Town Administrator:

(b) the town administrator shall serve at the will and pleasure of the council, and

(e) the town council shall have the power to review any action of the town administrator, and may direct the town administrator in any of his or her actions.

- It also contradicts Charter Part 1, Article I, Sec. 1.05 and Sec. 1.06 that state the legislative powers of the Town shall be vested in and exercised by a town council and the form of government of the Town shall be known as the Strong Council Plan.

#2 (g) instructs council members to refrain from demanding, interruptive access to staff or immediate responses or services when requesting information that requires significant staff time... Such requests will be made through the town administrator for scheduling and prioritizing through consensus of the town council.

Problems:

- council members become subordinated to staff. Staff is under the administrative direction and control of Council.
- who interprets "demanding, interruptive access to staff"? Staff or council?
- requiring requests be made through the town administrator for scheduling and prioritizing through consensus of the town council is a dangerous precedent to set. You are subjecting council to the town administrator and staff again, and now adding a consensus of council to get information from staff. Council is supposed to be in charge, not the other way around.
- this also interferes with 2 H

#2 (h) "I will devote adequate time for preparation prior to town council meetings and as much as possible."

- 2g above presents stumbling blocks to obtaining information that a council member may need to properly prepare for imminent or upcoming town business.

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

- You are setting up a police state with these ordinances.

#3 (a) and (b) – Penalties for Violation of Code of Conduct

- Why revise when already covered in:
- Part 1, Article II, The Town Council, Section 2.08 Vacancy and Forfeiture of Office and
- Part 1, Article VI, Sec. 6.01 Recall and Sec. 6.02 Conduct of Officials in Office.

4) Re: Boards and Committees

- Be reminded: Chapter 2, Article VIII – DIVISION 1. Sec. 2-211. – General procedures for all boards and committees reads: Citizen participation is vital to a democratic government. The Town of Malabar recognizes the unique contributions made by volunteers and encourages involvement in the policy-making process through service as an advisory board member. Boards and committees are standing bodies established by town ordinance and appointed by the town council to provide ongoing board/committee recommendations to town council on diverse matters of public concern.

These ordinances overreach, repress, and restrict anyone volunteering to be on council, boards, or committees. We urge you to reject these ordinances for the reasons stated above and because they will likely lead to a severe shortage of volunteers in the future.

Karlene & John Conroy
Alexander Lane, Malabar

Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing

**TOWN OF MALABAR
SPECIAL TOWN COUNCIL MEETING
MONDAY AUGUST 14, 2017
7:30 PM
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

A. CALL TO ORDER, PRAYER AND PLEDGE

B. ROLL CALL

C. PUBLIC HEARINGS: 2

**1. Resolution 16-2017 Increasing Stormwater Utility Fee
Used in Assessment Calculation:**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR AN INCREASE IN THE STORMWATER NON ADVALORUM ASSESSMENT FROM \$36.00 PER ERU SET IN FY 2000 TO \$52.00 PER ERU FOR THE TAX YEAR 2017, 2018 and 2019 AND A FURTHER INCREASE TO \$64.00 PER ERU FOR THE TAX YEAR 2020 AND BEYOND; PROVIDING FOR THE USE OF THE SAME BILLING CLASSIFICATIONS APPROVED IN 2000; PROVIDING FOR A COPY OF THE RESOLUTION TO BE DELIVERED TO THE BREVARD COUNTY TAX COLLECTOR; PROVIDING FOR REPEAL OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report 1

Recommendation: Approve Resolution 16-2017

2. Resolution 17-2017 Certifying the Stormwater Assessment Roll and approving the Stormwater Budget for FY 2017/2018

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR CERTIFICATION OF THE STORMWATER ASSESSMENT ROLL FROM BREVARD COUNTY; PROVIDING FOR A BUDGET OF _____ IN THE STORMWATER REVENUE ACCOUNT TO FUND STORMWATER PROJECTS APPROVED BY COUNCIL FOR FY 2017/2018; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report 1

Recommendation: Approve Resolution 17-2017

D. 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.

MALABAR SPECIAL TOWN COUNCIL MEETING MINUTES
August 14, 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. Mayor 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, excused

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Chair asked Clerk to explain the legal advertisement preceding this public hearing.

Franklin stated that a legal ad was run on 5/25/17 for a PH on 6/19/17. There were several problems with that advertising. Because I was not here, the legal notices did not get sent out to property owners and the notice did not include a map in order for that hearing to take place. This was explained at the RTCM of 6/19/17 and further mentioned at subsequent meetings. At the last meeting, I explained under my report that there was a formatting issue that caused a "1" to display on residential properties. The billing Class code of "S" was correct and the dollar fee was not impacted – it just caused confusion. This office took over 200 calls from residents who asked for and received this explanation.

The Public Notices were advertised in the Florida Today newspaper on both July 26 and 27th. The individual notices were mailed out from the USPS on 7/21/17. The advertisements complied with Florida Statute 197 when a municipality desires to increase a non-ad valorem fee. The mailouts were certified by the United States Postal Service from the third-party vendor hired to produce and send the notices.

These hearing notices were done by outside vendor using information from the Brevard County Property Appraisers Office. If persons believe they did not get the notice then they should contact both the Brevard County Property Tax Office and the Brevard Tax Collector because the addresses used were from their database for annual property tax bills.

C. PUBLIC HEARINGS/SPECIAL ORDERS: 2

1. Resolution 16-2017 Increasing Stormwater Utility Fee Used in Assessment Calculation:

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR AN INCREASE IN THE STORMWATER NON AD-VALORUM ASSESSMENT FROM \$36.00 PER ERU SET IN FY 2000 TO \$52.00 PER ERU FOR THE TAX YEAR 2017, 2018 and 2019 AND A FURTHER INCREASE TO \$64.00 PER ERU FOR THE TAX YEAR 2020 AND BEYOND; PROVIDING FOR THE USE OF THE SAME BILLING CLASSIFICATIONS APPROVED IN 2000; PROVIDING FOR A COPY OF THE RESOLUTION TO BE DELIVERED TO THE BREVARD COUNTY TAX COLLECTOR; PROVIDING FOR REPEAL OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report 1

Recommendation: Approve Resolution 16-2017

Resolution read by title only.

PH opened

Brian Vail, Smith Lane, his taxes are 3,500 per year. The proposed fee increase represents ½ of 1 percent in 17 years. He owns a business and knows what it costs. He would gladly pay 100-200 per year more to correct these long standing stormwater problems.

Gary Sandoe, Sandy Creek Lane, he doesn't have problem with money but with maintenance. He had to build the 850' road to build his home. Had to build it to Malabar standards and permitting from outside agencies. Then Malabar came in and dug ditches. His road cost 10% of the cost to build his house. The crown on the road is gone. He wants the ditches filled back in and make them swales. Now the ditches are cut down into the water table. How can you fix a road if it is flat and holds water? He has been here 33 years. All Malabar has done in the past is dig ditches. Fill them in so we don't have mosquitos. He then complimented Mr. Hoyt.

Liz Ritter, Orange Avenue, stated the fee is done by ERU which is based on 2,500 sf which is alright for homeowners, but as a business they get it stuck to them. They are required to do retention and detention. They contain their storm water. Enchanted lakes were supposed to be here. She then listed what some of the businesses pay in stormwater fees. A business is not the same as a home. She pays over \$36,000 in taxes and feels is a discrimination.

Skip Hard, Hard Lane, the dollar amount of these ERU is not that significant. Equate that with services he receives. He would pay more if Town would maintain the ditches and keep the water out of his property.

Karen Moreveki, Eva Lane, she understands what he (Mr. Sandoe) is saying. Eva Lane was built with swales and then a big ditch was dug in the 1980's. She also does not have a problem with the dollar amount, but do it with engineering. So, you know where the water is coming from and going to and what else it has to deal with along the way. Projects should have a priority not just because someone has complained more. When Eva was done, there were swales on both sides. If ditches flowed that would be one thing; but water sits in ditches. She thinks that engineering should be done first. Evaluate and make sure they are done properly. Need to set grades so ditches flow. They have a large culvert in front of their house and yet neighbors may have small culverts or no culvert. When you do the project, it will really improve the situation.

Karlene Conroy, stated that she put in a short written objection before the meeting and would like to do an addition. Brevard County went first with 36 then to 52 and 64. Why are you trying to lock in for the next three years.

Warren Dustin, Atz Road doesn't have problem with fees, but complains about maintenance. He has asked for the ditches to be mowed and ditch cleaned. His neighbor has a culvert that is a foot higher. He has talked to Mr. Hoyt. If Town will mow it he will weed wack it. Mr. Dustin then said it is now too wet for him to weed wack. He said he spoke to CM Korn and TA Hoyt.

CM Korn responded. It is a fact of life that they are all in a low area. Mentioned the new slope mower due this week. Pointed out the SW projects approved by Council in 2014. Need to put in an understandable format so we can publicize and share with residents.

Warren Dustin asked if the plan was still going thru D&D ranch. CM Korn said during the I-95 widening 11 culverts were added that add additional runoff into Malabar. Trying to get the water directly to Melbourne Tillman. Also, working with FIT. Need a plan that goes in a straight line to Melbourne Tillman canal.

CM Korn said we are doing work on private property. He has more water on his land on any other person. He can show aerial photos from 1928.

Gary Sandoe asked where does the water go when it leaves Eva and Sandy Creek Lanes. TA explained how Eva Lane drains under SR514 and out into Turkey Creek. There was a large collapsed pipe on the north side of Malabar Road that the Town recently replaced that should improve getting the stormwater to the 535-acre basin where this water is polished. Some of the water on Sandy Creek Lane makes it to Malabar Road. TA said 20% of Malabar is either wetland or swamp. Water table is anywhere between 4" to 40".

CM Korn said he hasn't been on that road (Sandy Creek Lane) for a while. He has lived here since late 19880's. Gary Sandoe said he has lived here since 1957. Malabar has not done a lot of good things with their money and their infrastructure. Is not intending to insult Council but over the years, there is not a good track record.

CM Korn explained the 10% of stormwater assessment fee that is paid to county to administer the utility - we could not hire someone for that money.

CM Rivet said all the projects now are engineered. He mentioned the demonstration project on east end of Atz Road that will take stormwater flow into Jordan. He said there have been errors in the past; they are trying to do better. Gary Sandoe appreciates Council - they are sacrificial lamb.

Carolina Alvarez wanted to state some corrections to misstatements made by public. She mentioned bi-annual inspections. She also clarified how the Camelot Park and other mobile home parks are calculated. It is based on several factors; not just sites, but all impervious surfaces within the park. Franklin added the county recently changed to annual inspections to those sites claiming credits. She added that Camelot gets a 20% maintenance credit and has inquired about a design credit. Ms. Alvarez stated the goal for all is to get the stormwater system working and keep it functional for everyone's benefit. Ms. Ritter requested advanced notice of future inspections.

Ms. Alvarez continued that the Town of Malabar doesn't have to collect it (stormwater assessment), but they will not get any grant assistance for stormwater projects without having it. She also explained that the ½ cent sales tax is not to clean ditches. It is to clean the water in the IRL. Projects must have a benefit ratio that makes sense to remove the maximum pollutants from the lagoon.

Ms. Alvarez corrected Karlene Conroy statements also. Brevard has one of the lowest stormwater assessments in the State. She talked about grants and the requirements of NCRS, for sediment control. Someone said FDOT is hard to work with. FDOT is willing to work together with communities for the betterment of stormwater as it relates to one of their projects. Contact FDOT with stormwater improvement projects that could be leveraged into one of their planned projects.

CM Mahoney asked what constitutes a credit. Usually a commercial project and can go from 20% to 100%. Also, Ag properties receive a 100% credit. CM Mahoney asked about leveraged - what does that mean. Has to be water quality project not just flood water control such as a Non-point 319 grant at 60 / 40 cost share. CM Rivet said leveraging mean getting most benefit.

CM Ball said he has a concern mentioned by Ms. Ritter. MHP are commercial. They are assessed at ½ ERU per slab. They get fees for those slabs. The formula takes into account the impervious areas. Ms. Alvarez stated that the County hired a consultant to do the study and the produce the formulas based on all of the impervious areas. She is billed for 96.5 sites. She is not in position to discuss a particular site and its fee and/or credits.

CM Mahoney said it seems like there should separate benefit areas. Clerk Franklin was recognized to state that when the Town of Malabar created the Malabar Stormwater Utility they created the Malabar Stormwater Utility Benefit Area and it encompassed the entire town as the town has open ditch drainage that still for the most part travels through historical drainage flows through private property and needs to be relocated to the Town rights-of-way.

Ms. Alvarez stated the County administers the utility for Malabar – they do not do the work. She continued that most of the sites built before 1984 don't get a credit because the rules didn't go into effect until then. You don't get that many resident so not that much money to do the projects and pollutants and they have assisted with that NPDES permit and audit requirement.

CM Ball asked if the State pays into this for the stormwater created from state roads. Yes, they have to pay for their own permits. They do not pay the County.

Mayor asked TA to explain the ditch maintenance and stormwater fees.

TA had several comments to make. This \$16-dollar increase is not a *tax* increase; it is a *fee* increase. It is being responsible fiscally to keep up with inflation. The increase will net the Town 30K. To replace a culvert under a road such as Corey, Atz, etc. costs on average \$10,000.00. He listed at least ten culverts known to need replacement and that is nearly 100K that will need to be expended for replacements over the next two years.

TA also showed the engineered plans that have been drawn up for several projects previously presented to Council to show proof of concept that will provide positive drainage results and visible results to the residents. Some of these projects will require filling in the ditches on private property but we can't perform that. Went through the projects and explained the conceptual projects on raising the depth of the ditches.

TA had said that we currently have 186K plus in Stormwater Reserves in the money market account. TA said he met with Warren and he did say he would take care of it if we initially mowed it and it looked pretty good. The slope mower will provide maintenance for those areas that can't be maintained by the owners. The old slope mower is over 15 years old and is inoperable often. The new slope mower will provide us a more reliable way to keep the ditches clean.

TA said another good example of an area in need of stormwater improvement is the Hall Road from the approved projects in 2014 that were approved by Council and then stopped. The ditches do not connect to any town stormwater utility.

TA stated **that if the** east end of Atz Road was the only problem area, that would be great – easy to fix – cost some money but would improve drainage. Things have been done over the past years without the benefit of a survey or even a **builder's level**.

TA has spoken to Senator Nelson about Federal financial assistance for the Eva Lane Stormwater project. It is not a simple snap of fingers.

TA said SJRWMD (Saint Johns River Water Management District) say we have 72 hours after a stormwater event for stormwater flows to go back to normal levels. He then gave the 1 inch of rainfall math using 55-gallon drums as an example again.

CM Mahoney – read Patty Foster email statement in opposition to this increase. (attached)

Chair directed that if a Council Member makes the motion he must support it, the seconder does not have to. He requests a motion:

MOTION: CM Rivet / CM Kohler to approve Resolution 16-2017 increasing the Stormwater Fee to \$52.00 for the years of 2017, 2018, 2019 and a further increase to \$64.00 in 2020 and beyond.

Discussion: CM Mahoney hold off and get more public input; they need time to process. CM Korn said it amounts to 4 cents a day. CM Ball came in with Brian Vail's point of view. It is not a deal breaker for him. If you are a business owner it is a lot of money. Can't speak to what was done before. TA is working hard to get the drainage improvements. We would like to see what a grant can do there.

Put out his views on it is not an easy one to make. SW is the number one problem/priority. Mayor said the benefit with the whole town not individual businesses. Vote accordingly. CM Rivet said the biggest project is storm water issues – this is not an onerous increase. It is money well spent. This is the oldest single problem to be addressed by Town since incorporation. Malabar doesn't have a buracary. We need to provide the municipal service that the people that live here are entitled to.

CM Mahoney – what is really being done? At the workshop the ditches would not be filled in. That is a neighborhood meeting. Need a clear concise plan. CM Mahoney we should CM Mahoney asked to see the PW log and hasn't seen it. CM Korn said the Town engineer recommends. He sees what works when it works. Goes back to the 20's when this was tomatoes farming.

ROLLCALL VOTE: 1)CM Ball, Aye; CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried 4 to 1.

2. Resolution 17-2017 Certifying the Stormwater Assessment Roll and approving the Stormwater Budget for FY 2017/2018

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR CERTIFICATION OF THE STORMWATER ASSESSMENT ROLL FROM BREVARD COUNTY; PROVIDING FOR A BUDGET OF \$105,000.00 IN THE STORMWATER REVENUE ACCOUNT TO FUND STORMWATER PROJECTS APPROVED BY COUNCIL FOR FY 2017/2018; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report 2

Recommendation: Approve Resolution 17-2017

Resolution read by title only.

PH opened - Speaker's Card:

Liz Ritter – biggest problem is communication. You can tell from the people that show up here. Gary Sandoe, this gentleman hit it on the head – it wasn't done back then so – you made poor choices – he appreciates us doing our job – but samo samo.

MOTION: CM Korn / CM Kohler to approve Resolution 17-2017 approving the assessment roll and budget for 2017/2018.

Discussion: none

ROLLCALL VOTE: CM Ball, Aye; 1)CM Mahoney, Nay; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion carried 4 to 1.

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

COUNCIL CHAIR MAY EXCUSE ATTORNEY NOW

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: 8/21/2017

DRAFT

Fw: Ordinances 2017-6, 2017-07, storm water tax increase

Read into record
8/14/2017 mtg.

Laura Mahoney

Mon 8/14/2017 11:57 AM

→ To: Debby Franklin <townclerk@townofmalabar.org>;

This needs to be added for tonight as well.
Apparently it was never passed on to you

→ From: Patty Foster <patricia.foster26@yahoo.com>

Sent: Wednesday, August 9, 2017 6:46 AM

→ To: Dick Korn

→ Cc: Pat Reilly

→ Subject: Ordinances 2017-6, 2017-07, storm water tax increase

Let this stand as notice to my opinion of Ordinance 2017-06, Ordinance 2017-7, the Storm water tax increase. I respectfully request you vote NO on these 3 items. I believe the ordinances restrict and shift power from the town council and give it to town staff. They have enough power. I respectfully request the storm water tax not be increased. We already pay the County for this service. 45% increase over 3 years is not acceptable. These are my opinions.

→ Respectfully

Patricia Foster

2885 Weber Rd

Malabar, FL

32950

Public Hearing

Debby Franklin

Mon 8/14/2017 5:25 PM

To: Pat Reilly <mayor@townofmalabar.org>;

📎 1 attachments (2 MB)

20170814172452.pdf;

Council approved Reso 03-2017 on 4/17/2017 which was titled "Intent to Increase Stormwater Fee" - passed 5 to 0. attached

Council workshop of 5/22/17 resulted in continued support of budgeting all stormwater projects approved in 2014 that have not been completed.

Legal Ad run May 25, 2017 not legally sufficient - it did not meet the legal requirements and the dataset to mail to individual property owners had errors that needed correcting by Brevard County before I could get the notices out to provide for the 20 days to file written objections. Clerk unexpectedly ill and notices did not get done.

F.S. 197 dictates how legal notice are done when a city is requesting a fee increase to this tax.

RTCM 6/19/17 - under additions - Franklin explained that the PH for Stormwater fee increase would be re-advertised.

July 20, 2017 stormwater projects proposed to use stormwater funds - Skip Hard claimed the residents attending had a good case to sue the town.


WS 7/24/17 - TA explains how estimated stormwater revenue is shown on budget under 363 and carried for from prior years collections is shown under 389 in budget.

RTCM 8/7/17 Agenda Face Sheet listed the upcoming Public Hearings on 8/14/17 for Stormwater fee increase from \$36. to \$52.

RTCM 8/7/17 DRAFT minutes have explanation under Clerks Report on the "1" that showed up on residential notices.

I asked Doug to scan the 2016 council meeting minutes and tag meetings where taxes and CIP projects were discussed and specifically stormwater project.

Debby K. Franklin
Certified Municipal Clerk

TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, APRIL 17, 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 4/03/17
 - Council Workshop Meeting Minutes 4/04/17
 - Exhibit: Agenda Report No. 1
 - Recommendation: Request Approval
- E. ATTORNEY REPORT:
- F. STAFF REPORTS: ADMINISTRATOR, CLERK, FIRE CHIEF:
- G. PUBLIC COMMENTS: Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) Three (3) Minute Limit per Speaker.
- H. PUBLIC HEARINGS/SPECIAL ORDERS: UNFINISHED BUSINESS/GENERAL ORDERS

ORDINANCES FOR FIRST READING: 1

2. Ordinance 2017-04: Redistricting Malabar Council Districts

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR AMENDMENT TO CHAPTER SEVEN, ELECTIONS, OF THE CODE OF ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2
Recommendation: Request Approval of 1st Reading of Ord 2017-04

RESOLUTIONS: 3

(2 Tabled Resolutions re: SR-514)

3. RESOLUTION 06-2017

(Tabled on 3/20/17 to this certain date & will require motion to remove from table.)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REQUESTING A REDUCTION OF SPEED TO 45 MPH ON STATE ROAD 514 ALSO KNOWN AS MALABAR ROAD FROM THE WEST END OF THE JURISDICTIONAL BOUNDARY EAST TO MARIE STREET; REQUESTING EXPEDITED INTERSECTION IMPROVEMENTS AT COREY AND WEBER ROADS TO INCLUDE TRAFFIC SIGNALS; SOLICITING SUPPORT FROM OTHER COMMUNITIES AND AGENCIES IN THIS REQUEST TO FLORIDA DEPARTMENT OF TRANSPORTATION; 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. 3
Recommendation: Request Action

next page

4. RESOLUTION 11-2017

(Tabled on 4/03/17 after TPO Presentation & will require motion to remove from table.)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A REQUEST FROM THE FLORIDA TRANSPORTATION PLANNING ORGANIZATION TO RECOMMEND A CONCEPT FOR THE WIDENING ON SR 514, MALABAR ROAD FROM THE WESTERN BOUNDARIES OF THE TOWN TO U. S. 1 (STATE ROAD 5) IN THE TOWN OF MALABAR; 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. 4

Recommendation: Request Action

5. RESOLUTION 03-2017 – Intent to Increase Storm Water Fee

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR FINDINGS; PROVIDING FOR AN INCREASE IN THE STORMWATER NON ADVALORUM ASSESSMENT FROM \$36.00 PER ERU SET IN FY 2000 TO \$_____ PER ERU FOR THE TAX YEAR 2017 AND A FURTHER INCREASE TO \$_____ PER ERU FOR THE TAX YEAR 2018; PROVIDING FOR CLASSIFICATIONS OF PROPERTY; PROVIDING FOR CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; ADOPTING THE UNIFORM AD VALOREM METHOD OF COLLECTION; PROVIDING FOR MASS MAIL OUT NOTIFICATION OF PUBLIC HEARING TO TAKE PLACE AT THE COUNCIL MEETING OF JUNE 19, 2017; PROVIDING FOR A COPY OF THE RESOLUTION TO BE DELIVERED TO THE BREVARD COUNTY TAX COLLECTOR; PROVIDING FOR REPEAL OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Approval of Resolution to Move Forward with Public Notices

MISCELLANEOUS: 1

6. Reconsider TPO/TAC Delegate (Mayor)

Exhibit: Agenda Report No. 6

Recommendation: Request Action

I. DISCUSSION / POSSIBLE ACTION: 1

7. Updates to Capital Improvement Plan Projects (C.I.P.) Due Annually Prior to Budget Workshops

Exhibit: Agenda Report No. 7

Recommendation: Request Direction to Staff

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

K. REPORTS – MAYOR AND COUNCIL MEMBERS

L. ANNOUNCEMENTS:

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

(1) Vacancy on the Trails & Greenways

M. 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.

REQUEST TO FLORIDA DEPARTMENT OF TRANSPORTATION; 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. 3
Recommendation: Request Action

Chair asked for a motion to take from table. None. Chair stated this resolution has died.

4. RESOLUTION 11-2017

(Tabled on 4/03/17 after TPO Presentation & will require motion to remove from table.)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A REQUEST FROM THE FLORIDA TRANSPORTATION PLANNING ORGANIZATION TO RECOMMEND A CONCEPT FOR THE WIDENING ON SR 514, MALABAR ROAD FROM THE WESTERN BOUNDARIES OF THE TOWN TO U. S. 1 (STATE ROAD 5) IN THE TOWN OF MALABAR; 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. 4
Recommendation: Request Action

Chair asked for a motion to take from table. None. Chair stated this resolution has died.

5. RESOLUTION 03-2017 – Intent to Increase Storm Water Fee

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR FINDINGS; PROVIDING FOR AN INCREASE IN THE STORMWATER NON ADVALORUM ASSESSMENT FROM \$36.00 PER ERU SET IN FY 2000 TO \$52.00 PER ERU FOR THE TAX YEARS 2017, 2018 and 2019 AND A FURTHER INCREASE TO \$64.00 PER ERU FOR THE TAX YEAR 2020; PROVIDING FOR CLASSIFICATIONS OF PROPERTY; PROVIDING FOR CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; ADOPTING THE UNIFORM AD VALOREM METHOD OF COLLECTION; PROVIDING FOR MASS MAIL OUT NOTIFICATION OF PUBLIC HEARING TO TAKE PLACE AT THE COUNCIL MEETING OF JUNE 19, 2017; PROVIDING FOR A COPY OF THE RESOLUTION TO BE DELIVERED TO THE BREVARD COUNTY TAX COLLECTOR; PROVIDING FOR REPEAL OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Approval of Reso to go Forward with Public Notices

Reso read by title only.

Speaker's Card: None.

MOTION: CM Rivet / CM Korn to approve Reso 03-2017.

Discussion: Chair said there are two missing values; staff is asking Council to determine what they should be.

CM Rivet did a compounded calculation on inflation and it would come up \$52. CM Korn said the County is at \$64 and he proposes \$52 also for 2017. These funds are used only to help with Storm Water projects which are the major concern in Malabar.

CM Mahoney, asked about how SW money is/can be spent. Clerk explained how the tax is assessed and the restrictions on how it can be spent.

CM Ball then what's the next number. CM Rivet said it could be 52 plus CPI for next year. TA said or have it adjusted every two or five years. CM Korn asked about keeping it at 52 and can be reviewed annually. Franklin explained that this is a multi-step process; once Council adopts the resolution with "intent" to increase the SW tax then the notice must be

sent out to all property owners of the 1,681 parcels. This is an expensive process that you don't want to undertake annually.

Consensus to set 2017 rate at \$52.00 for the tax years of 2017, 2018 and 2019 and then increase it to 64.00 in tax year 2020 until further revised by future council.

Chair asked for rollcall: Clerk stated that in previous Councils she had restated the CM that would vote first on multiple issues requiring rollcall votes. She asked if current council would support. Council said yes. Clerk said the "1)" would indicate the CM that votes first in Roll Call votes.



ROLL CALL Vote: CM Ball, Aye; 1)CM Mahoney, Aye; CM Rivet, Aye; CM Korn, Aye; CM Kohler, Aye. Motion Carried 5 to 0.

MISCELLANEOUS: 1

6. Reconsider TPO/TAC Delegate (Mayor)

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Chair said many people have come up to him and asked for reconsider the TPO appointment of Mr. Krieger as our Town's representative. They felt it should always be a staff person or a member of council. We have a lot going on right now with the discussions on widening SR-514.

MOTION: CM Ball / CM none to appoint Mayor Reilly as new delegate to TPO/TAC and stated his reason. It should be an engineer type person.

Mayor declined. It is daytime meeting and it would be difficult to break away. CM Korn said when it was first discussed it was his belief that it ought to be a council member. He had forgotten that a previous Town Administrator served in that position for many years. He should have stated it should be Council or staff. This is not to say that Mr. Krieger has not shown interest. We got a report today, we got a report last month. He has not come to Council personally with these reports; he called him this afternoon; he guessed Mr. Krieger went around to each of them today passing the reports out.

When the council was meeting with the consultant to do the redistricting, the Deputy Clerk/Treasurer Matt Stinnett was working with him and CM Korn was amazed at the level of detail he was familiar with regarding the specifics of this town. He is impressed with him and thinks he would do a good job in this position.

MOTION: CM Korn / CM Rivet to appoint Matt Stinnett as new delegate to TPO/TAC.

Discussion: CM Korn said that TA was the delegate in the past and he had overlooked that. It is not to say that Mr. Krieger has not done anything wrong. He has not come to us directly. Need to commend him. And ask him to continue as a CAC.

CM Korn would recommend the Deputy Town Clerk. CM Korn was at town hall on April 4 before the workshop to meet with Mr. Tozier and he was amazed at how well versed Mr. Stinnett is with the town. CM Ball said it should be a member of the seated Council.

CM Mahoney said she contacted the TPO and spoke with Lisa Hickman who said previously that the nice thing about having Don Krieger this year is that Malabar had an engineer for their delegate. He would understand the technical side. The other thing is that he was elected by this council. The TPO consists of 26 voting members, 13 must be municipal representatives approved by the SCTPO. Then she called the league of cities, Stu from IHB and he said he reads that he (Krieger) is representative because we voted him into that, but this us up to us.

RESOLUTION 03-2017

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR FINDINGS; ~~PROVIDING FOR AN INCREASE IN THE STORMWATER NON ADVALORUM ASSESSMENT FROM \$36.00 PER ERU SET IN FY 2000 TO \$52.00 PER ERU FOR THE TAX YEAR 2017, 2018 and 2019 AND A FURTHER INCREASE TO \$64.00 PER ERU FOR THE TAX YEAR 2020 AND BEYOND; PROVIDING FOR CLASSIFICATIONS OF PROPERTY; PROVIDING FOR CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; ADOPTING THE UNIFORM AD VALOREM METHOD OF COLLECTION; PROVIDING FOR MASS MAIL OUT NOTIFICATION OF PUBLIC HEARING TO TAKE PLACE AT THE COUNCIL MEETING OF JUNE 19, 2017; PROVIDING FOR A COPY OF THE RESOLUTION TO BE DELIVERED TO THE BREVARD COUNTY TAX COLLECTOR; PROVIDING FOR REPEAL OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.~~

WHEREAS, the Town of Malabar Council began assessing a non-advalorum stormwater utility fee in 2000 and has not increased it since that time; and

WHEREAS, pursuant to Section 13.5-6 of the Code of Ordinances of the Town, the Town Council is authorized to adopt a rate resolution for the purposes of imposing a stormwater utility fee or assessment upon the owners of all real property located within the Town; and

WHEREAS, Section 197.3632, Florida Statutes and Section 13.5-6 of the Code of Ordinances of the Town, provides that on or before the fifteenth day of September of any year, the Town Council shall hold a public hearing to adopt a rate resolution for the purpose of imposing said schedule of annual stormwater utility fees or assessment, after proper notice and publication as necessary; and

WHEREAS, the Town of Malabar Council began budgeting for stormwater management projects that would begin the process of putting the stormwater drainage plan within the Town's rights-of-way where they can be properly maintained by the Town and this increase will assist in the required funding of such projects; and

WHEREAS, prior to September 15, 2017, the Town Council will hold a public hearing to adopt a budget for the operation and maintenance of the Town's stormwater management program for the ensuing fiscal year, and this rate resolution adopted by the Town Council provides sufficient revenues to fund the budget adopted for the operation and maintenance of the Town's stormwater management program; and

WHEREAS, this Resolution provides a Schedule of Stormwater Assessments and Classifications specifying the amount and calculation of annual stormwater utility fee and assessment imposed within the Town for the fiscal year beginning October 1, 2017; and

WHEREAS, the proposed new rates are similar to the rates approved by Brevard County when they proposed rate increases in 2014; and

WHEREAS, upon adoption of this resolution, the Town of Malabar Council will hold a public hearing after mailing out notices as required under state law when proposing a stormwater utility fee rate increase; and

WHEREAS, the Town Council is satisfied that the annual Stormwater Utility Assessment Roll has been prepared in conformity with the said Schedule of Stormwater Assessments and Classifications; and

WHEREAS, the Town of Malabar Council will take public comment on the proposed increase at this public hearing scheduled for June 19, 2017.

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

SECTION 1. Findings. The above "Whereas" statements are true and correct and incorporated herein.

SECTION 2. Schedule.

1. The Malabar Council adopts the Schedule of Stormwater Assessments and Classifications, attached hereto as Exhibit A, for Stormwater Benefit Areas within the Town of Malabar.
2. The Malabar Council hereby adopts stormwater utility fees incorporating the rate of \$52.00 per ERU for tax years 2017, 2018 and 2019 in the calculation formulas set forth in Exhibit A. The rate increase to \$64.00 per ERU for tax year 2020 and beyond.

SECTION 3. It is intended by the Town Council that this Resolution constitutes the rate resolution specified in Section 13.5-6 of the Code of Ordinances of the Town.

SECTION 4. The Town Council hereby ratifies, confirms, and certifies that the annual Stormwater Utility Assessment Roll for the fiscal year beginning October 1, 2017 is in conformity with the Schedule of Rates adopted by the town Council.

SECTION 5. A certified copy of this rate resolution shall be delivered to the Brevard County Tax Collector.

SECTION 6. Those stormwater utility assessments imposed during the fiscal year beginning October 1, 2017, shall be billed by the Town or its authorized representative, pursuant to the provisions of Chapter 13.5 of the Code of Ordinances of the Town and shall be due and payable on November 1 of each year, pursuant to law.

SECTION 7. The Town Council adopts the uniform ad valorem method for the levy, collection and enforcement of non-ad valorem assessments pursuant to section 197. 3632, Florida Statutes.

SECTION 8. The Clerk is hereby directed to provide mail out notice of the public hearing to take place at the council meeting of June 19, 2017.

SECTION 9. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 10. Effective Date.

This Resolution shall not take effect until after the Public Hearing set for June 19, 2017.

Malabar could pay for the water to come down Malabar Road but that would be a capital investment with an unknown return. CM Mahoney said we want to remain rural. Keep building the trail systems.

CM Rivet said there are three options:


- Encourage commercial development along Babcock, Malabar Road and Highway 1
- Extend water and sewer along Malabar Road
- Raise taxes.

Actions resulting from this workshop:

- 1) Get estimate of cost of topographic map of Town with detailed elevations of culverts and intersections and drainage ditches – an updated one from 1988.
- 2) Get cost of outsourcing the ditches and mowing for CM Mahoney.
- 3) Ask Drew (T&G) to contact the upland property owner re: donating the land at north end of Rocky Point Road – CM Ball
- 4) Put new slope mower in budget at 140K-150K – CM Kohler
- 5) Budget for road repaving, not resurfacing or tarring – 81K is not enough - Mayor
- 6) Budget all the approved stormwater projects from 2014 that have not been completed – CM Rivet
- 7) Get prioritized list of Fire Dept needs from the Chief for the next five years.
- 8) Come up with ideas to encourage commercial development
- 9) Carry forward all 2017 CIP to 2018
- 10) Eliminate the items that will be accomplished when SR514 is widened – Corey and Weber intersections, multi-modal along Malabar
- 11) Joint use of a new structure at Malabar Scrub Sanctuary with EEL program. Process should be a separate three-year project with bond money and information to citizens. Old TH can then become a community center.
- 12) Get list of roads with conditions from Tom and Morris so priority list can be created for recapping
- 13) Get document from Mayor from 1988 to show Morris re: topo info

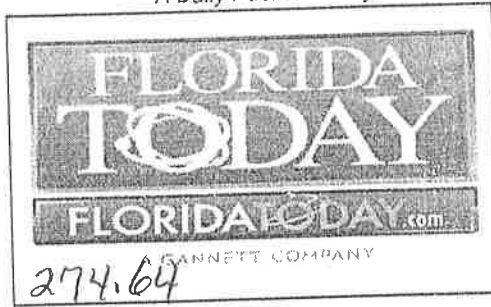
Chair Reilly, without objection, adjourned the meeting at 9:06 pm.

BY: Patrick T. Reilly
Mayor Patrick T. Reilly, Council Chair


ATTEST

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

Approved: RTCM 6/5/2017 after verification of audio as noted above.

MAY 1 2017



RAN TOO SOON NO MAP

TOWN OF MALABAR
2725 MALABAR RD

MALABAR, FL 32950

STATE OF FLORIDA COUNTY OF BREVARD:
Before the undersigned authority personally appeared Kim Curro, who on oath says that he or she is a Legal Advertising Representative of the FLORIDA TODAY, a daily newspaper published in Brevard County, Florida that the attached copy of advertisement, being a Legal Ad in the matter of

Notice Public Hearing

as published in FLORIDA TODAY in the issue(s) of:

05/25/17

Affiant further says that the said FLORIDA TODAY is a newspaper in said Brevard County, Florida and that the said newspaper has heretofore been continuously published in said Brevard County, Florida each day and has been entered as periodicals matter at the post office in MELBOURNE in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 25th of May 2017, by Kim Curro who is personally known to me

Ruby Royer
Ruby Royer
Notary Public for the State of Florida
My Commission expires January 30, 2018

Publication Cost: \$161.20
Ad No: 0002135950
Customer No: BRE-6TO207



RUBY ROYER
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF080043
Expires 1/30/2018

AD# 2135050
NOTICE OF PUBLIC HEARING ON PROPOSED STORMWATER UTILITY FEE INCREASE
THIS IS NOT AN INVOICE

5/25/2017
May 10, 2017

Dear Property Owner:
The Malabar Town Council will hold a public hearing on June 19, 2017 at 7:30 P.M. at Malabar Town Hall Council chambers to consider a proposed increase in the rate per Equivalent Residential Unit (ERU) to be used in the formulas for calculating your Stormwater Utility Fee.
All affected property owners have:
• The right to appear at the hearing
• To file written comments or objections to the town within 20 days of the date of this notice to the address noted above.
If the proposed increase in the rate used to calculate your stormwater utility fee is approved, that increased rate will result in an increase of your Stormwater Utility Fee non-ad valorum assessment when it appears on your property tax bill in November, 2017 and in subsequent years. (One ERU is based upon a single-family residence with 2,500 square feet of impervious area.)
The Town of Malabar is proposing an increase in the rate per ERU that is used in a formula to calculate your Stormwater Utility Fee. The rate per ERU that is used in the formula is proposed to increase from \$36.00 to \$2.00 for the upcoming Fiscal Years of 17/18, 18/19 and 19/20. The increased fee is proposed to generate \$92,076.00 for Town stormwater projects. The further increase to \$64.00 for 20/21 and thereafter will generate 112,141.00 for Town stormwater projects. The Town has not requested an increase in this non-advalorum assessment for the last 17 years.
If approved by the Malabar Council, the amount of your Stormwater Utility Fee will be calculated from existing Land Use Bill Class Formulas, which are based upon the number of ERU's established for your parcel and the rate (dollar amount per ERU) that is approved by Malabar Council at the Public Hearing. Those existing formulas will also be incorporated in any amended rate resolution adopted at the hearing. The Resolution 03-2017 with Exhibit "A" provides the classifications and formulas used and is available at the Town Clerk's Office Monday through Frida 8:30 to 5:00P.M.
Failure to pay the fee will cause a tax certificate to be issued pursuant to Chapter 197, Florida Statutes, which may result in a loss of title to the property. If you have any questions, please contact the Town of Malabar at 321-727-7764.
Property Identification Number: Tax Account Number:
Current Land Use Bill Class: Number of ERU Units:
Site Address: Billing Amount:
The billing amount is subject to the same discounts and penalties for early and later payments that apply to ad valorum taxes that appear on your property tax bill.
Sincerely,
Debby Franklin, Malabar Town Clerk/Treasurer
Malabar Town Hall, 2725 Malabar Road, Malabar, FL 32950
321-727-7764 www.townofmalabar.org

AD# 2135050
NOTICE OF PUBLIC HEARING ON PROPOSED STORMWATER UTILITY FEE INCREASE
THIS IS NOT AN INVOICE

5/25/2017
May 10, 2017

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Property Identification Number: Tax Account Number:
Current Land Use Bill Class: Number of ERU Units:
Site Address: Billing Amount:
The billing amount is subject to the same discounts and penalties for early and later payments that apply to ad valorum taxes that appear on your property tax bill.
Sincerely,
Debby Franklin, Malabar Town Clerk/Treasurer
Malabar Town Hall, 2725 Malabar Road, Malabar, FL 32950
321-727-7764 www.townofmalabar.org

Dataset of City Brevard work. Needs work.

RE: Town of Malabar Stormwater Assessment Fee Increase

Valliere, Christine V <Christine.Valliere@brevardfl.gov>

Tue 5/30/2017 11:43 AM

To: Debby Franklin <townclerk@townofmalabar.org>;

Cc: Bessler, Paul G <Paul.Bessler@brevardfl.gov>; Citta, Valerie <Valerie.Citta@brevardfl.gov>;

Ms. Franklin,

I understand there is a question about the notice requirements for the town's stormwater assessment increase. The county is also considering an increase to its solid waste collection special assessment. Section 197.3632(4)(a) establishes the notice requirement. Courts have applied this subsection to fee increases. If there are any further questions, Mr. Bohne can contact me directly.

(4)(a) A local government shall adopt a non-ad valorem assessment roll at a public hearing held between January 1 and September 15, or between January 1 and September 25 for any county as defined in s. 125.011(1), if:

1. The non-ad valorem assessment is levied for the first time;
2. The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
3. The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
4. There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

↓
(b) At least 20 days prior to the public hearing, the local government shall notice the hearing by first-class United States mail and by publication in a newspaper generally circulated within each county contained in the boundaries of the local government. The notice by mail shall be sent to each person owning property subject to the assessment and shall include the following information: the purpose of the assessment; the total amount to be levied against each parcel; the unit of measurement to be applied against each parcel to determine the assessment; the number of such units contained within each parcel; the total revenue the local government will collect by the assessment; a statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title; a statement that all affected property owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and the date, time, and place of the hearing. However, notice by mail shall not be required if notice by mail is otherwise required by general or special law governing a taxing authority and such notice is served at least 30 days prior to the authority's public hearing on adoption of a new or amended non-ad valorem assessment roll. The published notice shall contain at least the following information: the name of the local governing board; a geographic depiction of the property subject to the assessment; the proposed schedule of the assessment; the fact that the assessment will be collected by the tax collector; and a statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice.

Thanks,

Christine Valliere, Esq.
Brevard County Attorney's Office

Town of Malabar, 2725 Malabar Road, Malabar, FL 32950
321.727.7764 (Office) 321.727.9997 (Fax) www.townofmalabar.org

To: brelegals@gannett.com
From: Debby Franklin, Town Clerk, Town of Malabar
townclerk@townofmalabar.org

July 24, 2017

Please place the following Notice of Public Hearing two times: **Wednesday, July 26, 2017 and Thursday, July 27, 2017**. Please put the heading in **BOLD** font. Please send proof via email to: townclerk@townofmalabar.org and mail **ONE** affidavit to 2725 Malabar Road, Malabar, FL 32950.

Thank you,

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

**TOWN OF MALABAR
NOTICE OF PUBLIC HEARING**

The Town Council of the Town of Malabar, Brevard County, Florida will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Monday, August 14, 2017 at 7:30 pm or as soon thereafter as the matter can be heard, for a public hearing on a rate Resolution and Resolution certifying the non-ad valorem Stormwater Utility Assessment roll.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; PROVIDING FOR AN INCREASE IN THE STORMWATER NON ADVALORUM ASSESSMENT FROM \$36.00 PER ERU SET IN FY 2000 TO \$52.00 PER ERU FOR THE TAX YEAR 2017, 2018 and 2019 AND A FURTHER INCREASE TO \$64.00 PER ERU FOR THE TAX YEAR 2020 AND BEYOND; PROVIDING FOR THE USE OF THE SAME BILLING CLASSIFICATIONS APPROVED IN 2000; PROVIDING FOR A COPY OF THE RESOLUTION TO BE DELIVERED TO THE BREVARD COUNTY TAX COLLECTOR; PROVIDING FOR REPEAL OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

AND

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING AN ANNUAL BUDGET FOR THE TOWN'S STORMWATER UTILITY; PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; PROVIDING AN EFFECTIVE DATE.

The Malabar Town Council will hold a public hearing on August 14, 2017 at 7:30 P.M. at Malabar Town Hall Council chambers to consider a proposed increase in the rate per Equivalent Residential Unit (ERU) to be used in the formulas for calculating your Stormwater Utility Fee.

All affected property owners will have this notice mailed to them with Exhibit I and will have:

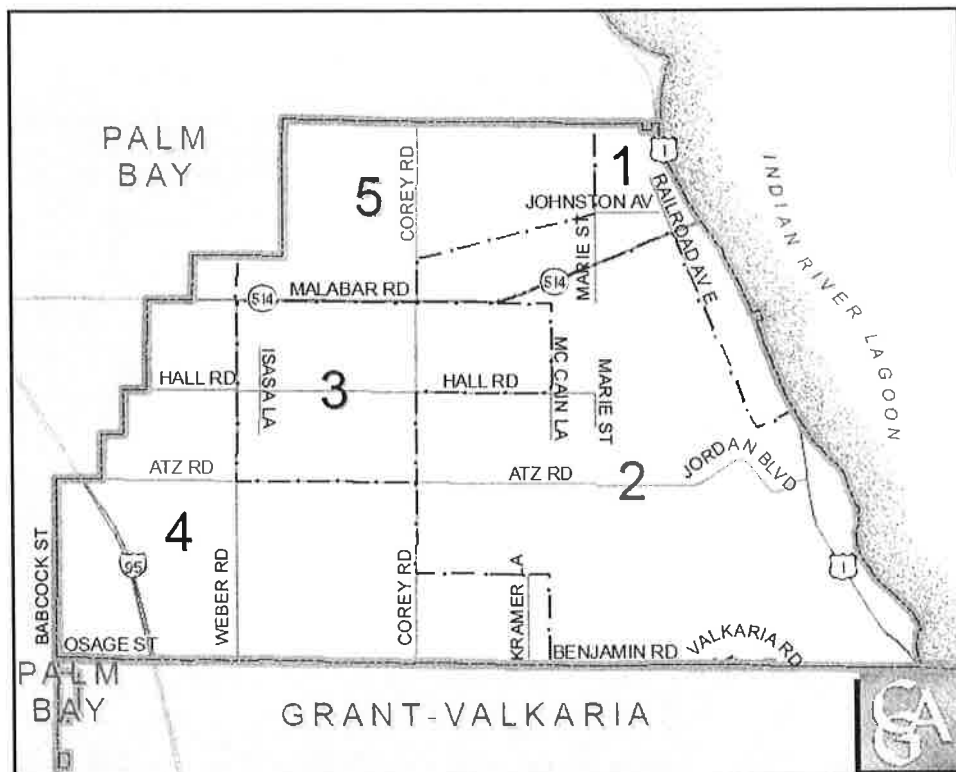
- The right to appear at the hearing
- To file written comments or objections to the town within 20 days of the date of this notice to the address noted above.

If the proposed increase in the rate used to calculate your stormwater utility fee is approved, that increased rate will result in an increase of your Stormwater Utility Fee non-ad valorem assessment when it appears on your property tax bill in November, 2017 and in subsequent years. (One ERU is based upon a single-family residence with 2,500 square feet of impervious area.)

The Town of Malabar is proposing an increase in the rate per ERU that is used in a formula to calculate your Stormwater Utility fee. The rate per ERU that is used in the formula is proposed to increase from \$36.00 to 52.00 for the upcoming Fiscal Years of 17/18, 18/19 and 19/20. The increased fee is proposed to generate \$92,076.00 for Town stormwater projects. The further increase to \$64.00 for 20/21 and thereafter will generate 112,141.00 for Town stormwater projects. The Town has not requested an increase in this non-advalorum assessment for the last 17 years.

If approved by the Malabar Council, the amount of your Stormwater Utility Fee will be calculated from existing formulas identified in the Land Use Bill Class Formulas, which are based upon the number of ERU's established for your parcel and the rate (dollar amount per ERU) that is approved by Malabar Council at the Public Hearing. Those existing formulas will also be incorporated in any amended rate resolution adopted at the hearing.

Failure to pay the fee will cause a tax certificate to be issued pursuant to Chapter 197, Florida Statutes, which may result in a loss of title to the property. The billing amount is subject to the same discounts and penalties for early and later payments that apply to ad valorem taxes that appear on your property tax bill.



The proposed resolutions may be inspected by the public at the Town Clerk's Office between the hours of 8:30AM and 4:30PM weekdays. All interested parties may appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764. Debby K. Franklin, C.M.C., Town Clerk/Treasurer.

Mailed to:

Town of Malabar
2725 Malabar Rd
Malabar, FL 32950

A daily publication by:



STATE OF FLORIDA
COUNTY OF BREVARD

Before the undersigned authority personally appeared Becky Holland, who on oath says that she is LEGAL ADVERTISING SPECIALIST of the FLORIDA TODAY, a newspaper published in Brevard County, Florida; that the attached copy of advertising being a

LEGAL NOTICE

Ad # (592369	\$	1,705.40
TOW060)			
TOWN OF MALABAR			
the	Court	NOTICE OF PUBLIC HEARING	

as published in the FLORIDA TODAY in the issue(s) of:

July 26 & 27, 2017

Affiant further says that the said FLORIDA TODAY is a newspaper in said Brevard County, Florida, and that the said newspaper has heretofore been continuously published in said Brevard County, Florida, regularly as stated above, and has been entered as periodicals matter at the post office in MELBOURNE in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

Becky Holland
(Signature of Affiant)

Sworn to and subscribed before this:

27th day of July 2017
Ruby Royer
(Signature of Notary Public)



RUBY ROYER
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF068043
Expires 1/30/2018

Ruby Royer
(Name of Notary Typed, Printed or Stamped)

Personally Known X or Produced Identification _____
Type Identification Produced: _____

TOWN OF MALABAR NOTICE OF PUBLIC HEARING

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All affected property owners will have this notice mailed to them with Exhibit I and will have:

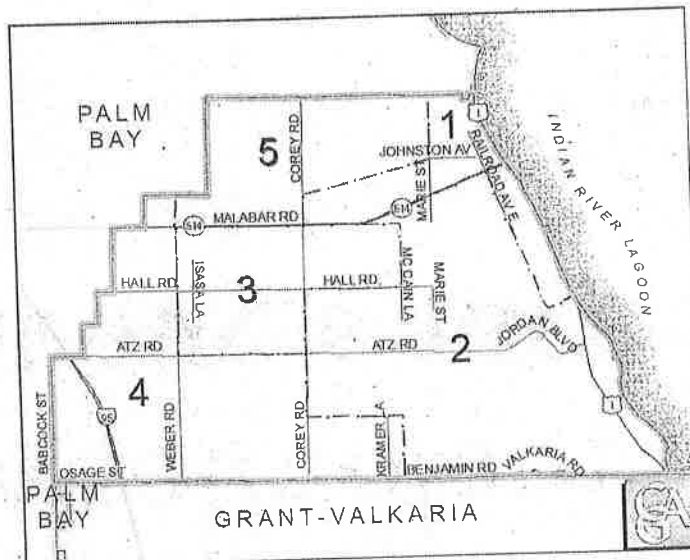
- The right to appear at the hearing
- To file written comments or objections to the town within 20 days of the date of this notice to the address noted above.

If the proposed increase in the rate used to calculate your stormwater utility fee is approved, that increased rate will result in an increase of your Stormwater Utility Fee non-ad valorem assessment when it appears on your property tax bill in November, 2017 and in subsequent years. (One ERU is based upon a single-family residence with 2,500 square feet of impervious area.)

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If approved by the Malabar Council, the amount of your Stormwater Utility Fee will be calculated from existing formulas identified in the Land Use Bill Class Formulas, which are based upon the number of ERU's established for your parcel and the rate (dollar amount per ERU) that is approved by Malabar Council at the Public Hearing. Those existing formulas will also be incorporated in any amended rate resolution adopted at the hearing.

Failure to pay the fee will cause a tax certificate to be issued pursuant to Chapter 197, Florida Statutes, which may result in a loss of title to the property. The billing amount is subject to the same discounts and penalties for early and later payments that apply to ad valorum taxes that appear on your property tax bill.



The proposed resolutions may be inspected by the public at the Town Clerk's Office between the hours of 8:30AM and 4:30PM weekdays. All interested parties may appear and be heard at this meeting of the Town Council with respect to these topics. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764.
Debby K. Franklin, C.M.C., Town Clerk/Treasurer.

Town of Malabar
2725 Malabar Road
Malabar, FL 32950

July 20, 2017

Legal
Notice



NULL JOINT REVOCABLE LIVING TRUST
000543
018

NOTICE OF PUBLIC HEARING ON PROPOSED STORMWATER UTILITY FEE INCREASE
THIS IS NOT AN INVOICE

Dear Property Owner:

The Malabar Town Council will hold a public hearing on June 20, 2017 at 7:30 P.M. at Malabar Town Hall Council chambers to consider proposed increase in the rate per Equivalent Residential Unit (ERU) to be used in the formulas for calculating your Stormwater Utility Fee.

All affected property owners have:

- * The right to appear at the hearing
- * To file written comments or objections to the town within 20 days of the date of this notice to the address noted above.

If the proposed increase in the rate used to calculate your Stormwater Utility Fee is approved, that increased rate will result in an increase of your Stormwater Utility Fee non-ad valorem assessment when it appears on your property tax bill in November, 2017 and in subsequent years. (One ERU is based upon a single-family residence with 2,500 square feet of impervious area.)

The Town of Malabar is proposing an increase in the rate per ERU that is used in a formula to calculate your Stormwater Utility Fee. The rate per ERU that is used in the formula is proposed to increase from \$36.00 to \$52.00 for the upcoming Fiscal Years of 17/18, 18/19 and 19/20. The increased fee is proposed to generate \$92,076.00 for Town stormwater projects. The further increase to \$64.00 for 20/21 and thereafter will generate \$112,141.00 for Town stormwater projects. The Town has not requested an increase in this non-ad valorem assessment for the last 17 years.

If approved by the Malabar Council, the amount of your Stormwater Utility Fee will be calculated from existing formulas identified in the attached Exhibit 1 – Land Use Bill Class Formulas, which are based upon the number of ERU's established for your parcel and the rate (dollar amount per ERU) that is approved by Malabar Council at the Public Hearing. Those existing formulas will also be incorporated in any amended rate resolution adopted at the hearing.

Failure to pay the fee will cause a tax certificate to be issued pursuant to Chapter 197, Florida Statutes, which may result in a loss of title to the property. If you have any questions, please contact the Town of Malabar at 321-727-7764.

Property Identification Number: 29 3711-00-757	Tax Account Number: 2931691	Current Stormwater Bill Class: S
Category/Number of ERU Units: 1 Residential 1 Commercial 0 Vacant		
Site Address: 3060 COREY RD MALABAR 32950		
Billing Amount Fiscal Year 17-18,18-19,19-20: \$52.00		Billing Amount Fiscal Year 20-21: \$64.00

The billing amount is subject to the same discounts and penalties for early and later payments that apply to ad valorem taxes that appear on your property tax bill.

EXHIBIT I

SCHEDULE OF CLASSIFICATIONS AND CALCULATIONS FOR ANNUAL STORMWATER UTILITY ASSESSMENT ROLL FOR COUNTY FISCAL YEAR BEGINNING OCTOBER 1, 2014.

BILLING CLASSIFICATIONS		
A	Agricultural	Any property which is used for commercial agricultural pursuits, and is designated as commercial agricultural on the Brevard County Property Appraiser's records.
B	Condominium and Manufactured Housing	Any property identifying an individual condominium or townhouse unit or any property upon which is located a manufactured home.
D	Multiple Single Family Dwelling Units	Any property upon which is located more than one building or structure, each of which is designed and constructed for, and capable for use as a residence for one family.
E	Commercial	Any lot or parcel upon which is located any structure or facility designed for business related uses.
I	Industrial	Any lot or parcel upon which there is a structure or building for use as productive enterprises and/or manufacturing activities.
M	Multifamily Dwelling	Any property upon which is located any building or structure, consisting of more than one dwelling unit, each designed for occupancy for one family.
N	Non-Billable	Those parcels or lots which are right of way, local Government-Owned lands or properties not billable by state, and local laws.
R	Mixed Use Residential	Any lot or parcel which contains more than one use, including one or more Single family dwellings in conjunction with more than one multi-family unit, each unit being assessed at its corresponding billing class ERU calculation.
S	Single Family Dwelling	Any property upon which is located any building or structure designed or constructed for, and capable for use as a residence for one family and is erected on a separate lot or parcel.
T	Vacant Natural	Any lot or parcel that is unaltered, contains no structures, and has not been designated as Agricultural (A) or Non-Billable (N).
V	Vacant Altered	Any lot or parcel that contains no structures, is not designated as Agricultural (A) or, Non-Billable (N), and has been modified from its natural state, including lots within platted subdivided areas.
Y	Vacant Improved	Any lot or parcel which is not designated as Agricultural (A) or Non-Billable (N), and has been either graded, cleared, compacted and/or excessively landscaped.

BILL CLASS	CALCULATION FORMULA
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LAND USE Bill Class Formulas

One **ERU**, or Equivalent Residential Unit, for the purpose of calculating service charge rates has been determined through engineering analysis to be 2,500 square feet of effective impervious area.

List of terms used in the rate calculation formulas

TERM	DEFINITION
G	Gross Area of Parcel in Square Feet
I	Impervious Area of Parcel in Square Feet
M	Mitigation Factor with a range of 0.2 to 1.0 and an increment of 0.01
N	Number of Dwelling Units or Hook-Ups
NI	Adjustment Factor for Alteration of Pervious Surfaces
0.20	Pervious Factor Coefficient
0.90	Impervious Factor Coefficient
0.03	Pervious Factor Coefficient for Agricultural, Vacant Altered, Industrial Use Only
0.40	Infiltration Factor for Agricultural Land Use Cover for Good Soil Conditions (same question as prevs)
0.60	Average Runoff Coefficient for Open Space for Average Soil Conditions
DF	Melbourne Tillman Drain Fee
RATE	Per ERU. This is set by the taxing authority. (County or city with inter-local agreement)
Billing	Stormwater assessment amount

A	Agricultural (same as Vacant Altered)	# ERU's = $G \times 0.03 \times 0.4 / 2,500$ sq. ft. Billing = [#ERU's x RATE x M] – DF
B	Condominium	Billing = [1 ERU x .50 x RATE x M] - DF
D	Multiple Single Family Dwelling Units	Billing = [1 ERU x N x RATE x M] - DF <i>(If number units is unavailable this defaults to calculating with 2.)</i>
E	Commercial	NI = I x 1.25 # ERU's Commercial = { [(NI - I) x 0.2] + (I x 0.9) } / 2,500 sq. ft. # ERU's Vacant Altered = [(G - NI) x 0.03 x 0.40] / 2,500 sq. ft. <i>(If Vacant Altered LT 0 then this defaults to 0)</i> Billing = [{(# ERU's Commercial x RATE) + (# ERU's Vacant Altered x RATE)} x M] – DF
I	Industrial	NI = I x 1.25 # ERU's Commercial = { [(NI - I) x 0.2] + (I x 0.9) } / 2,500 sq. ft. # ERU's Vacant Improved = [(G - NI) x 0.03 x 0.60] / 2,500 sq. ft. <i>(If Vacant Improved LT 0 then this defaults to 0)</i> Billing = [{(# ERU's Commercial x RATE) + (# ERU's Vacant Improved x RATE)} x M] - DF
M	Multifamily Dwelling	Billing = [1 ERU x 0.50 x N x RATE x M] – DF
N	Non Billable	Billing = 0. No bills generated for these land uses
R	Mixed Use Residential	Billing = [(Sum of S, M, B, D ERUs) x RATE x M] – DF <i>Sum explained – Mixed Use Residential accounts will have more than one structure on the account. To each individual structure the Property Appraiser Office assigns a number of units and a use code. Each use code has a calculation factor of either 0.5 or 1.0. An amount for each structure is computed by multiplying the number of units times the calculation factor times the rate. The sum of these amounts for the account is then used in the Bill Class R calculation.</i>
S	Single Family Dwelling	Billing = [1 ERU x RATE x M] – DF
T	Vacant Natural	Billing = 0. No bills generated for these land uses
V	Vacant Altered (same as agricultural)	# ERU's = $G \times 0.03 \times 0.4 / 2,500$ sq. ft. Billing = [#ERU's x RATE x M] – DF
Y	Vacant Improved	# ERU's = [(G x 0.03 x 0.4) + (I x 0.9)] / 2,500 sq. ft. Billing = [#ERU's x RATE x M] – DF
	Minimum Bill Amount	The minimum billing is set at \$2.35 per parcel

4. **ORDINANCE 2017-08 MORATORIUM 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: MORATORIUM 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

Fire Chief then explained the circumstances of such a tragic fire and thanked Council for recognition of the efforts of the Malabar Fire Department responders.

H. BOARD/COMMITTEE REPORTS:

Trails and Greenways Committee: Drew Thompson short presentation. Will be doing something in the south as presented at earlier meetings. Will be talking with Doug to give access to Jordan scrub. Working on concept. Brevard County has park land north of Valkaria Road.

Planning and Zoning Board: Liz Ritter

Still working on the sign code. They had to go through the definitions first; then go back to the table.

Park and Recreation Board: Hans Kemmler

Hans informed them about the memorials and have gone through several suggestions. Low maintenance and style. They had a presentation by Formmasters in Deland. Rick Basso came and left example of poured concrete polished. 4 x 8 and 4" thick. They don't have all the details and price ranges. \$75 per square foot. If they cast it and we pick it up it could be for 3K. Will have some options with a lower and higher cost. With them pouring the columns.


Things are going well at the golf disc sanctuary.

Re: Huggins Park: they have gone through so many ideas that they may want to sell the land and use the money for parks and recreation.

TA said hopefully he will have two sails up by the end of the year. The decision has been made to have separate sails. Yes. Greater chance of them surviving. CM Korn asked on the memorial wall, would the existing memorials be included? Yes.

I. STAFF REPORTS: ADMINISTRATOR: CLERK: FIRE CHIEF

ADMINISTRATOR: TA - nothing



CLERK: Re: The proposed Stormwater fee increase advertisement has run in the paper and the individual notices were mailed out as required by statute so Council can hold a Public Hearing on August 14, 2017 regarding the increase. There was a formatting issue when the dataset was inserted into the Notices mailed out that caused a "1" to be printed under "commercial" on all residential notices. It in no way had any effect on the bill classification. We have appreciated all the calls from property owners that requested clarification. A resident on Sandy Creek Lane delivered a request to speak at the 8/14/17 public hearing. Council was copied on the request. Also, another call resulted in a request for a stormwater credit for their stormwater system and that will probably be successful.

FIRE CHIEF: Went over July report – FF1 class will be offered. Applied for the SCOTT Paks for grants. That is paid for by DOF at 100%.

Chief said regarding the question that came up at the Budget WS he wanted to provide the background for the increase under "radios" in the budget. The County is going to digital radios. They have 14 portable radios. He only has three that are digital. The rest are analog. They must rely on the radios. The county will switch over entirely in 2019 or 2020. The radios in the vehicles can be modified.

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.

TOWN OF MALABAR

COUNCIL WORKSHOP MEETING

TUESDAY, AUGUST 15, 2017

7:30 P.M.

MALABAR TOWN HALL

2725 MALABAR ROAD

MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE
- B. ROLL CALL
- C. WORKSHOP ACTION:
 - 1. Review Proposed Budget for FY 2017/2018
- D. ADJOURNMENT

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

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

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

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

MALABAR COUNCIL WORKSHOP MEETING
August 15, 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
	RICHARD KOHLER
ADMINISTRATOR	DOUG HOYT
CLERK/TREASURER:	DEBBY FRANKLIN

C. WORKSHOP ACTION: DISCUSSION ON 2017/2018 BUDGET –

Chair went through over view. Chair asked if anyone had inspected the roads as a homework assignment. Chair also sent email re: upcoming 2018 ballot question on the additional 25K exemption. At the latest Mayor's Breakfast, they discussed this and its potential impact. If Council does not keep that in mind that it will most assuredly be approved, then the one revenue that is under the control of local government (HOME RULE) has been undermined by the State Legislature that submitted the bill that was ultimately approved and signed by the Governor for placement on the 2018 ballot.

CM Rivet asked how many CM had heard from the Malabar residents on their concerns about the upcoming budget? No response from most, Kohler heard from one, Rivet heard from one; Ball had heard from a couple; Korn had heard from a couple; CM Mahoney had heard from multiple citizens – all complaining about the increased taxes with no benefit.

TA said he provided list of expenditures soon that had previously been provided to Council individually; they need to be considered in future budgets. Franklin pointed out the 5-year Capital Improvement Plan list that was a result of workshops that Council determined which projects should be funded and how over the next five years.

CM Mahoney said more transparency is needed starting with a better website. She stated there are so many secrets. Everyone else is hiding behind the one that comes forward.

CM Korn said they are being transparent and open on what they do – who is she referring to?

CM Ball said that we funded stormwater projects and we should put focus on those and see what other projects we can put off for future budgets.

CM Korn told Chair about his request to add Discussion item on 8/21/17 agenda to discuss Impact Fees for new development. CM Rivet and Kohler agreed to add for discussion.

Council determined to reduce the millage rate proposed by staff they would have to reduce the expenditures – so use this workshop to go over the expenditures before considering the revenue reductions or increases. Consensus to proceed.

Revenues:

The column on the right side of budget page provides source of estimate.

No Council re-review of these projections at this time by Council.

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.

Reduce Mayor exp to 1500 creating a 500 plus

511.6400 – zero out for next year - Consensus to delete/postpone this expense to the future. Chairs are chairs – they are functional.

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 9:20pm

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.

\$28,200.00 in savings. Focus is to show citizens a big impact. Still are looking at additional money. Consensus to put that money into streets and roads. 55K plus 28,200.00. Does it for the right thing for the Town? Show the citizens that we are doing something.

TA agrees with Ball and Mayor – make these projects visible and it is good for the town. The topography is never going to be – press ahead smartly with them.

Franklin suggested a vision statement and short med and long term statements.

St Johns reversed position on ditch blocks. Possibly seek grant funds to change out those culverts. Next meeting look over final budget, Vision Statement and CIP.

Chair Reilly, without objection, adjourned the workshop meeting at 10:02 pm.

BY: _____
Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST:

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

Approved: RTCM 8/21/2017

MALABAR MILLAGE CONSIDERATIONS

Current Taxable Value= 227,832,918
x 2.0906 Max over RBR
476,307.00 Ad valorum

Current Taxable Value= 227,832,918
x 2.0260 Current
461,589.00 Ad valorum

Current Taxable Value= 227,832,918
x 1.9005 RBR
432,996.00 Ad valorum

\$43,311.00 difference from the RBR to the Max

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 2
Meeting Date: August 21, 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.

First reading was held on August 7, 2017. This ordinance has been advertised for Public Hearing on this date.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Ordinance 2017-06
Code of Conduct – Council

ACTION OPTIONS:

Request Adoption of Ordinance 2017-06

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
AGENDA ITEM REPORT**

AGENDA ITEM NO: 3
Meeting Date: August 21, 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.

First reading was held on August 7, 2017. This ordinance has been advertised for Public Hearing on this date.

FINANCIAL IMPACT:

None

ATTACHMENTS:

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

ACTION OPTIONS:

Request Adoption of Ordinance 2017-07

ORDINANCE 2017-07

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

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

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

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

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

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

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

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

-Town or town shall mean the Town of Malabar

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

2. Code of Conduct

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

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

(c) I will represent the interests of the entire Town when making decisions and will rely upon available facts and my independent judgment. In my capacity as an appointed Board or Committee Member, I will avoid conflicts of interest and avoid using my official position for personal, professional, or partisan gain.

(d) I will demonstrate dignity, respect, and courtesy toward those whom I am in contact with in my capacity as an appointed Board or Committee Member. I will refrain from intimidation and ridicule of fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of the Town, members of the public, vendors of the town and those conducting business with the Town.

(e) In my capacity as an appointed Board or Committee Member, I will refrain from inappropriate language including statements that are malicious, threatening, slanderous, disparaging, mean-spirited, vulgar or abusive. All disagreements, concerns or criticisms shall be framed in language that is in keeping with the dignity and professionalism of an appointed official and the honor of my respective Town Board or Committee.

(f) I will focus on solving problems. I will maintain appropriate decorum and professional demeanor in the conduct of Town business and work cooperatively and conscientiously with others as I request or receive information, examine data or weigh alternatives in the decision-making process.

(g) I will demonstrate patience and refrain from demanding, interruptive access to Staff or immediate responses or services when requesting information that requires significant Staff time in research, preparation or analysis or that will result in Staff neglect of urgent duties. Such requests will be made through the Town Administrator for scheduling and prioritizing through consensus of my respective Town Board or Committee.

(h) I will devote adequate time for preparation prior to my respective Town Board or Committee meetings and as much as possible, I will be in attendance at such meetings and all other scheduled events where my participation is required.

(i) I will respect diversity and encourage the open expression of divergent ideas and opinions from fellow Board or Committee Members, Town Council Members, Town Administrator, Town Attorney, Staff, citizens of the Town, members of the public, vendors of the town and those conducting business with the Town.

(j) I will listen actively and objectively to others' concerns or constructive criticisms.

(k) I will refrain from any individual action that could compromise lawfully authorized decisions of the Town or the integrity of the Town and my fellow Board or Committee Members. I will delineate clearly for any audience whether I am acting or speaking as an individual citizen or in my capacity as a Town Board or Committee Member.

(l) I will maintain in confidence any privileged or confidential information, as provided by law, provided to me by the town and will not disclose such information publicly or to any person who has not been duly authorized by the town to receive such information, unless such disclosure is duly authorized by the Town Council or required by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing Ordinance was moved for adoption by Council Member _____. 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: 4
Meeting Date: August 21, 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.

First reading was held on August 7, 2017. This ordinance has been advertised for Public Hearing on this date.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Ordinance 2017-08

ACTION OPTIONS:

Request Adoption of Ordinance 2017-08

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 21, 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.

First reading was held on August 7, 2017. This has been advertised for Public Hearing on this date.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Ordinance 2017-09

ACTION OPTIONS:

Request Adoption of Ordinance 2017-09

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 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 MATTERS REGULATED BY THE PROVISIONS OF COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL 687 IN THE PUBLIC RIGHT-OF-WAYS 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 21, 2017

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Discuss Impact Fees

BACKGROUND/HISTORY:

FINANCIAL IMPACT:

This would be an expense for new residents

ATTACHMENTS:

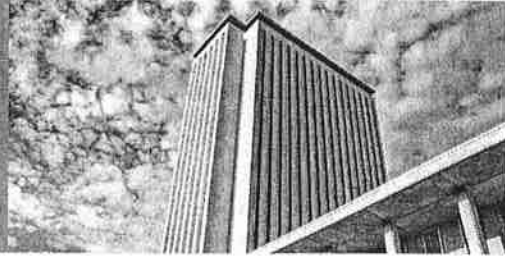
Info from Palm Shores

ACTION OPTIONS:

Discussion and Direction to Staff



2017 Legislative Issue Briefs



Impact Fees

Priority Statement:

The Florida League of Cities OPPOSES legislation that restricts a municipalities' Home Rule authority to set impact fees or transportation concurrency.

Talking Points:

- Impact fees and transportation concurrency are mechanisms used by local governments to ensure that new developments pay for the infrastructure needs they generate.
- An impact fee is based on the proportionate share of the cost of the public facilities needed to serve new development.
- Transportation concurrency is a state law that requires each local government in Florida to adopt a comprehensive plan and implement regulations that require adequate basic services and facilities be provided at the same time as, or *concurrent* with, any new development.
- In Florida, average impact fees have been declining since 2008. In 2008, the average impact fee in Florida for an average single-family detached unit was \$9,832, while in 2015, it was \$7,660.
- In recent years, bills have been filed to limit or restrict a local government's ability to impose impact fees and transportation concurrency, or to make it easier for a developer to prevail in a legal challenge to an impact fee.
- Current law authorizes local governments to impose or waive impact fees and transportation concurrency by local ordinance, which is a legislative decision of the local government's governing body. This must remain a local decision determined by the needs and character of the community.

Background:

Impact fees and transportation concurrency are mechanisms used by local governments to ensure that new developments pay for the infrastructure needs they create.

An impact fee is based on the proportionate share of the cost of the public facilities needed to serve new development. Florida law requires that calculation of an impact fee be based on the most recent and localized data. In addition, a city imposing an impact fee must provide a full accounting of reports detailing impact fee collections and expenditures.

Transportation concurrency is a state law that requires each local government in Florida to adopt a comprehensive plan and implement regulations that require adequate basic services and facilities be

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provided at the same time as, or *concurrent* with, any new development. For example, one of these required types of services is transportation facilities. The law states that a local government cannot approve a new development unless it finds that there will be adequate transportation facilities to serve the traffic from that new development at the time of occupancy.

Impact fees and transportation concurrency are adopted by ordinance, which is a legislative decision of the city's governing body. Current law authorizes municipalities to waive the collection of impact fees. As a result, some cities have made the local decision to waive them, hoping this will be a catalyst for economic development and foster growth. Other cities have examined their current infrastructure needs and concluded imposing impact fees or transportation concurrency is necessary to adequately fund the development or growth.

Developers have long argued that impact fees in Florida are excessive and unfair. Additionally, because the courts accord a high level of deference to the local governments' decision-making process, some developers feel that legal challenges to decisions regarding impact fees are almost impossible to win. In recent years, bills have been filed to limit or restrict a local government's ability to impose impact fees and transportation concurrency, or to make it easier for a developer to prevail in a legal challenge to an impact fee.

In 2016, the governor proposed language prohibiting local governments from imposing impact fees and transportation concurrency on small businesses of 12 or fewer employees for commercial buildings less than 6,000 square feet. The governor's proposed legislation included a provision allowing local governments to "opt out" of this prohibition by a super majority vote of the local governing body. Ultimately, this provision was adopted by the House in CS/HB 1325 (Boyd) but failed to pass when it was not considered by the Senate.

Status:

At this time, no legislation has been filed regarding Impact Fees. We will continue to monitor amendments to other bills and Committee bills that may be introduced throughout the session.

Revised: 4/21/2017