

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, OCTOBER 02, 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 8/21/17**
 - Rescheduled Town Council Meeting Minutes 9/18/17**
 - Regular Town Council Meeting Minutes 9/25/17**
 - Budget Workshop Minutes 8/29/17**
 - 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. BOARD/COMMITTEE REPORTS:**
- Trails and Greenways Committee:**
- Planning and Zoning Board**
- Park and Recreation Board**
- I. PUBLIC HEARINGS/SPECIAL ORDERS: 0**
- UNFINISHED BUSINESS/GENERAL ORDERS**
- ORDINANCES FOR FIRST READING:**
- 2. ORDINANCE 2017-12: REGULATIONS FOR WIRELESS INFRASTRUCTURE WITHIN MALABAR RIGHTS-OF-WAY**
- AN ORDINANCE OF THE TOWN OF MALABAR, TO IMPLEMENT THE REGULATORY AUTHORITY PROVIDED IN 2017 HOUSE BILL 687, THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT; AMENDING CHAPTER 13 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES; CREATING ARTICLE IV SMALL WIRELESS FACILITIES IN RIGHT-OF-WAYS; PROVIDING FOR DEFINITIONS, AND PURPOSE, PENALTIES, EMERGENCY REPAIR OR REMOVAL; PROVIDING FOR SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES; PROVIDING FOR A PERMIT APPLICATION AND REVIEW PROCEDURE; PROVIDING FOR BONDING REQUIREMENTS, INDEMNIFICATION AND INSURANCE; PROVIDING FOR WAIVERS AND APPEALS; PROVIDING FOR ABANDONMENT, TERMINATION AND REMOVAL; PROVIDING FOR SEVERABILITY, CODIFICATION; CONFLICTS AND AN EFFECTIVE DATE.
- Exhibit:** Agenda Report No. 2
- Recommendation:** Request Approval of First Reading of Ord 2017-12

RESOLUTIONS: 1

3. Resolution 15-2017

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

Exhibit: Agenda Report No. 3

Recommendation: Adopt Reso 15-2017

MISCELLANEOUS: 0

J. DISCUSSION/POSSIBLE ACTION:

4. Recording & Video of Town Meetings

Exhibit: Agenda Report No. 4

Recommendation: Discussion and Direction

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

L. REPORTS – MAYOR AND COUNCIL MEMBERS

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

N. 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: October 02, 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:

- Rescheduled Town Council Meeting – 9/18/2017
- Regular Town Council Meeting – 8/21/2017
- Town Council Budget Workshop – 8/29/2017
- Regular Town Council Meeting – 09/25/2017

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

ATTACHMENTS:

Draft Minutes of the 09/18/2017, 08/21/2017, 8/29/2017 and 9/25/17 meetings

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
SEPTEMBER 18, 2017 7:30 PM

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

A. CALL TO ORDER:

Council Chair, Patrick T. Reilly called the meeting to order at 7:30 pm. CM Rivet led the prayer and pledge.

Chair explained the reason for the rescheduled date of the previously advertised public hearing meeting set for 9/11/17.

B. ROLL CALL:

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

For the record, Acting Chief Mike Foley is also present.

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: TA asked that Reso be moved to Oct 2 at FDOT request so they can be in attendance. Under Misc., #5, TA stated the low bidder asked that the authorization to proceed to pave Eva Lane be moved out to 9/25/17. Council Consensus.

D. ATTORNEY REPORT: absent

E, STAFF REPORTS: ADMINISTRATOR: Town came through hurricane reasonably well. Continue to have flooding issues. The stormwater projects are to be done one at a time. Gave update on Cason Lane SW project recently completed and the positive feedback from residents. Next projects will be at the west end of Atz and Hall. CM Korn asked about the low hanging wires on Atz. Did that get cleared up? TA said no but that is something they are pursuing with utilities.

CLERK: nothing

FIRE CHIEF: August ran 24 calls 18th – 21st. Reported a little roof damage at Fire Station; leaks not structural. CM Mahoney asked about Chief. Acting Chief said to keep him in your prayers.

F. 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) **Five (5) Minute Limit per Speaker.**

Collette Hyde, 20140 Eva Lane, since 1989. The reality is, many of the users are using it as a thoroughfare and they are going very fast. She would support paving but would ask Council to consider putting in a speed hump or bump. CM Korn said he has seen how fast they go.

Skip Hard, Hard Lane, spoke of the grading degradation of Eva Lane and Quarterman Lane. Fire whoever is doing grading. He has heard concerns about dust and suggested they put crushed asphalt.

G. PUBLIC HEARINGS: First Readings on Ordinances setting Millage and Budget
1. Adopt Millage (Ord 2017-10)

Read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 2.0906 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2017 THROUGH SEPTEMBER 30, 2018, AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1

Recommendation: Adopt Ord 2017-10

PH Opened – none. PH Closed

MOTION: CM Korn / CM Kohler to approve first reading of Ord 2017-10.

Discussion: CM Korn asked when the notice was mailed out. If residents have questions, make sure they call and get the correct information. CM Ball said at WS he feels they trimmed from the budget and had extra money and he feels he can't support it unless the excess goes into reserves to build it back up. We tell the taxpayers we are going to increase the SW fee and then increase the millage and then not put any of it into savings.

CM Korn said they should pay attention to any potential excess funds.

CM Mahoney said the Council did a really good job working on the individual line items during budget workshops. Need to continue to reduce to work within our means.

TA said philosophically he agrees to with CM Ball, if there were additional monies. We have had a storm event. It would seem reasonable to him to have money in a contingency fund to cover those expenses. In the period between 2006 and 2015 Council had to take from reserves every year except one and put very little back.

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

2. Adopt Tentative Budget (Ord 2017-11)

Exhibit: Agenda Report No. 2

Recommendation: Adopt Ord 2017-11

Read TITLE and Section 1 of Ordinance.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE TENTATIVE BUDGET OF \$1,879,053.00 FOR THE PERIOD FROM OCTOBER 1, 2017 THROUGH SEPTEMBER 30, 2018; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1. The Town Council, in regular session duly assembled adopt the tentative Fiscal Year 17/18 Budget of \$1,879,053.00 consisting of \$1,625,193.00 for general fund expenditures and \$253,860.00 in approved expenditures for Stormwater projects funded through non-ad valorem fees.

PH opened:

Brian Vail, Smith Lane, commends this Council for working as hard as they did on the budget. Doing a lot with a little for a long time. Last few councils have done well to not take from reserves. Vail believes in keeping the cookie jar full. Paving of Eva Lane has been promised for a long time. Bring it up to speed.

Danny White, Atz Road, agrees with Brian Vail and what he said. SW money is targeted and can only be spent on stormwater projects. PH closed:

MOTION: CM Kohler / CM Rivet to approve first reading of Ord 2017-11. Discussion: none.

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

H. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

ACTION ITEMS: ORDINANCES FOR FIRST READING: 0; RESOLUTIONS:

3. Resolution 15-2017 – moved to October 2, 2017 meeting

~~A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, SUPPORTING A REQUEST FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION TO SUPPORT A CONCEPT FOR THE WIDENING OF SR 514,~~

MISCELLANEOUS: 2

4. Qualifying Candidates for 2017 Election

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Chair directed Clerk to speak to this item. Clerk read from Agenda report on Candidate's Qualifying submittals.

MOTION: CM Rivet / CM Ball to "Qualify" the Candidates for Dist. 4 and 5. **Vote:** All Ayes.

Following Item moved to 9/25/17:

5. ~~Authorization to Proceed with Paving of Eva Lane:~~

I. DISCUSSION / POSSIBLE ACTION: 0

I. PUBLIC COMMENTS:

Brian Vail, traveled many of the roads especially the SOM (south of Malabar Road) area after Hurricane Irma. Many people were surprised by how fast the water went down even on Quarterman Lane. He knows someone down there. Quarterman Lane was about 1 foot over the crest of the road and within 3 days it was down quite a bit. For the amount of rain, we had pre-storm and during the storm this showed improvements. But we need to continue to make improvements. Thought he would share that.

K. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Dist. 1: CM Ball: - Council has made a commitment to make progress on stormwater improvements. CM Ball asked about the drainage on the State-owned property that adversely affects Malabar. Town came through storm incredibly. We need to be thankful that it didn't get it worse. CM Mahoney asked about clearing the brush – do we have plan. Mayor said WM doesn't go down lanes. CM Ball said they don't go down US 1 either. CM Mahoney said her garbage was missed before the storm.

Chair recognized Franklin. Clerk explained that the Franchise agreement with WM is for regular service – home, yard and recycle. It does not include storm debris. Last year we joined with the other cities and allowed Brevard County to be the lead agency to deal with FEMA for debris pick up. She gave example of the method of collection last year – only two sweeps and no control over when and where those sweeps would occur. This year the Administrator took the initiative to hire an independent contractor to make initial sweep along main corridors – Corey, Weber, Hall and Atz Roads. Administrator will notify Brevard Council tomorrow on signing onto the Debris Clean-up with the County for FEMA pick-up.

CM Ball asked Council if the attorney's bill can be sent electronically rather than printed and copied. No objections.

CM Dist. 2: CM Mahoney: Why we didn't have the minutes. She wanted to submit hers again. Chair explained this was a rescheduled Public Hearing from 9/11/17 for the millage and budget. CM Mahoney said Glatter Road at the east end lives Jean Bamberger and her

pasture flooded. The PW crew cleared just to her house before the storm and stopped. If they had cleared all the way to the east her pasture would not have flooded. TA said the Gradall broke down.

CM Mahoney said she got a call that the electronic sign on Highway 1 refreshes quicker than 30 seconds.

CM Mahoney said Mr. Sylinski, Quarterman Lane, submitted his statement to her and she sent it to Debby and Doug. Franklin said it had been printed and copied out. TA had met with Mr. Sylinski on Sunday and had previously met with him and so did Engineer. CM Mahoney wanted it attached to minutes.

CM Dist. 3: CM Rivet: - stated we had roughly 12 inches of rain with the recent storm. Even in the SW part of the Town the drainage is improving and holding steady and we keep making progress on next phases of plan. Caution fellow Council Members and residents from micro-managing and straying from stormwater projects. Don't get distracted.

CM Dist. 4: CM Korn: Korn said he was in hospital and could only watch Channel 13 and saw all the pictures his wife took after storm and then three days later. And the amount that was absorbed back into the ground was significant.

CM Dist. 5: CM Kohler: Saw great response from neighbors after the storm and was grateful to see how we all came together. That is why we like to call Malabar home.

Mayor: He had three Mayor events; one was a Solar panel event – it was cancelled due to the hurricane. Nanna's house fund raising event was also postponed. He got calls from residents – tree on Marie Street. Wanted to thank Fire Dept for their good assistance.

Clerk Franklin also wanted to recognize Fire Dept for cutting down tree that fell across Rocky Point Road and others within Brook Hollow subdivision.

L. ANNOUNCEMENTS:

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

M. ADJOURNMENT:

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:25 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 10/02/2017

MALABAR COUNCIL WORKSHOP MEETING
August 29, 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 #3 ACTION: DISCUSSION ON 2017/2018 BUDGET –

Chair recapped last workshop – it was Council consensus to keep millage rate at 2.0906 and put the reductions made at the last workshop into Streets and Roads. Franklin stated those reductions of \$28,200.00 were placed in the 541.4610 account.

CM Ball proposed putting those reductions into reserves to build it back up rather than redirect it to Streets and Roads. He stated they just raised the stormwater fee and now we are raising ad valorem to the maximum.

CM Korn said that it is not the maximum – and Council needs to say it out loud. Council's job is to approve budget to cover what is needed to provide the services to the municipality; if they don't they are not they are not fulfilling our duty. He stated that the other 66 counties in Florida can set the millage at whatever they feel is needed; Brevard is the only one restricted. The Mayor said it needs to go into roads. CM Rivet said that previous councils have always done a good job of managing the money – there just hasn't been enough.

TA said we are not raising taxes. We are adjusting for inflation. 2.14 % - using that number from the Federal government. They are simply keeping up with the costs same as other local and state and federal agencies.

CM Korn asked Clerk for the current year millage rates from other Brevard municipalities and then read from the list. (attached) We are the bottom of the barrel. If anyone says we are raising taxes to the maximum they should try living elsewhere.

CM Mahoney – some of her concerns – she proposed using the roll over money, saying that if the money budgeted this year for a particular expense should have any remaining money it should "carry forward" to the next budget.

Franklin explained that the municipal budget is required by the State to be balanced and must accommodate expected annual expenditures and their proposed financial revenue sources to pay for those expenditures.

CM Mahoney asked about the pension amount shown on the audit. She called Withum (town audit firm) they confirmed the 6% is the town portion that it pays.

CM Mahoney also said a lawn service would be cheaper than being done in-house. She never gets the information she requests.

CM Korn said they have done it both ways and it is not cost effective to out-source mowing.

CM Kohler said when a culvert fails, they would have to stop and bid the job and wait and then get it scheduled – not practical at all; the department staff are needed.

CM Korn said it comes from experience. CM Rivet said we are stretched to the limit. Even using contractors – we are understaffed. It makes sense from every angle that you look at it to have the dept.

CM Korn said we have gone from a levy of 1.9 to 2.02 to 2.09. We are buying two new pieces of equipment. CM Korn also mentioned the value of the Town property subject to levy. There will be an additional (3rd) 25K exemption on ballot in 2018 for voter consideration. He attended a seminar on exemptions in Orlando for 2017 FLC conference. He thinks it may not pass due to the number of non-homesteaded properties that would not vote for it.

Mayor said Council needs to show the potential financial impact, then plan for that lost revenue by this levy and educate the residents on what this means.

CM Ball said they have to make a big push on drainage this coming year with the recent increase. He wants to see the money cut from the general fund budget go into reserves – not roads.

TA said the town has replaced 52 culverts under roads at an average cost of 12K; depressions on roads means a culvert failing below. Probably have another xx number of failing culverts – do the math.

TA said the Atz Road drainage project will go forward - running a straight grade to make water flow towards Corey Road. The project at Hall Road and Flashy Lane will be starting on Sept 4.

CM Korn said he talked to Senator Bill Nelson at the FLC Conf. The Senator was familiar with the issue and said the TA was keeping him informed. TA said the grant for Eva Lane drainage was well received by the IRL grant commission, but they did not like the road paving included.

Mayor said any more cuts?

CM Ball didn't think there would be any more cuts.

CM Korn said the health, safety and convenience to the resident is his priority; people need fire protection, scrapped roads and police protection.

CM Rivet said the loud protesters are not representative. When the MSTU goes to voters every two years it is approved with an overwhelming majority.

CM Korn "transparency" is like the "apparatus" word used at previous meeting. He has good friends and neighbors that think Council is mispending the taxpayer's money based on what they hear. He has followed Town business since 1995. There is no "mispending" of Town funds – they are continually playing catch up because there hasn't been enough money budgeted in the past.

CM Korn then goes into Eva Lane paving – there is a need for it there. He would support that. But there are some people that would object.

CM Mahoney said it is not about the money – she talks to many people and they want their property fixed. They don't like the way the money is spent – some people used to have a crown and ditches done. They don't call town because they know that they will be told there is no money.

CM Korn said the point is we are going to have to work on the infrastructure whether I am on council or not. Have a responsibility to the residents of Malabar.

CM Kohler – show residents that things stated in the budget are getting done for the Town's benefit.

CM Ball suggests taking it to the voters as a referendum question to increase the millage rate.

CM Korn agreed and said they would need to commit to educating the residents in the upcoming year on the need for the increased levy.

CM Rivet – regarding the repeated criticism about lack of transparency – this budget shows what the high-level goals are – including road improvement and the drainage plan from 2014 that is posted on the wall as updated. It is not Council's job to micro manage.

CM Ball said we are getting off topic.

Clerk Franklin explained that the intent of the budget is to develop a spending plan. Council decides on the high-level goals to accomplish in the FY and funds them and staff carries them out. All proposed expenditures are identified. She recommended excess money not be placed in a slush fund for possible projects. The appropriate place is in a contingency fund in the major departments to provide funds in the budget for unforeseen expenditures – not planned ones.

Any change to the approved budget that increases or decreases the bottom line would require a budget amendment – with two public hearings and a legal notice in the paper.

The Flashy Lane and Hall Road is a planned SW project and all property owners have all been sent notices. Regarding the east end of Atz Road there was a community meeting held with advertising and notices to solicit resident's input on the proposed SW project to put the swales and ditches within the Town's right-of-way. CM Rivet said it dove tails with the SW improvements for the whole area.

CM Korn asked Chief if he was ok with the budget. Chief is ok with it.

Mayor said they could do a consensus at a workshop – do a straw vote: put the \$28,200.00 into reserves or keep it in road improvements. CM Mahoney agrees with CM Ball to put it into reserves. CM Rivet said to keep it transparent – keep it in roads. CM Kohler, Korn and Mayor agree.

8:40 pm - End of workshop

Mayor then opened discussion on the Five-Year Plan. Council is interested in either fire wells or tanks within the town for fire safety. They discussed the plan to pursue information on a shared building with EELp for a new Town Hall. TA will continue to work on that.

8:50 pm - End of Discussion

Clerk Franklin suggested a future Council workshop to lay out a short, medium and long range plan and possible vision statement.

Summary of proposed Budget:

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

Expenditures:

511 Legislative: includes the recording equipment and support and the updates to the code.

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, Deputy and clerical assistant and related personnel costs. TA said Deputy has two college degrees and is working towards his Masters in Public Administration.

514: Legal:

515: Comprehensive Planning

519: General Government:

522: Fire Control:

524: Protective Inspections: This is the Building Department.

525: Disaster Plans

538: Flood Control / Stormwater Management: non-ad valorem fees & carried forward revenues pay for these expenditures.

541: Streets and Roads:

572: Parks and Recreation

574: Special Events: This is budgeted annually as a break-even event.

Chair Reilly, without objection, adjourned the workshop meeting at 8:50pm.

BY: _____
Mayor Patrick T. Reilly, Council Chair

(seal)

ATTEST:

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

Approved: RTCM 10/02/2017

MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
AUGUST 21, 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 Korn 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, excused
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN

For the record, Fire Chief Leonard Thomassen is not in attendance.

C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES: Mayor declared the agenda face sheet should be changed regarding the date on the minutes to read 8/7/17 – agenda face sheet incorrectly listed minutes as 8/10/17.

D. APPROVAL OF THE MINUTES:

1. Regular Town Council Meeting Minutes 8/07/17
Town Council Special Meeting Minutes 8/14/17
Town Council Budget Workshop Mtg Minutes 8/15/17
Exhibit: Agenda Report No. 1
Recommendation: Request Approval

MOTION: CM Rivet / CM Ball to approve RTCM minutes of 8/07/2017.

Discussion: CM Mahoney handed out the use of the park application referenced in these minutes to show the use was approved. Her main thing is she can't approve stuff that is created by staff after the meetings and hurting the people. The people and all residents should expect courtesy at all times. They have been discluded and pitted against by staff and bring hurt and misrepresentative.

CM Kohler asked the specific portion of minutes she has issue with or is incorrect. She said the rebuttal.

CM Ball asked what changed to the minutes. She said fully 100% of the minutes should be redone. CM Korn said he did not see where any citizens were disenfranchised.

Vote: Ayes, 4; Nay, 1. (CM Mahoney)

MOTION: CM Korn / CM Kohler to approve Special meeting minutes of 8/14/2017.

Discussion: CM Mahoney said those minutes also didn't cover what citizens said; lot of citizens there that spoke about multiple issues and their statements are not represented in the minutes.

Vote: 4 Ayes; Nay, 1. (CM Mahoney)

MOTION: CM Ball / CM Kohler to approve Budget Workshop minutes 8/15/2017

Discussion: none

Vote: All Ayes.

E. ATTORNEY REPORT: Previously he explained the 8A Medical Marijuana, adopting similar to pharmacies. Potential grandfathering if regulations are in place prior to July 1. The City of Orlando believes the law provides for grandfathering with regs prior to 7/1/15. But if they amend them then they no longer could be considered grandfathered.

Orlando was requesting an amendment to the legislation. The same conditions apply – 3 options for municipalities. Vast majorities of citizens passed the constitutional amendments, did not state they were going to have these facilities nearby. The availability is still going to be there. Clarified through/by state legislature.

F. STAFF REPORTS

ADMINISTRATOR: excused

CLERK: Qualifying period ends at 4:30 on Wednesday. There will be an agenda item for 9/11/17 for Council to “Qualify” the Candidates that have submitted packages.

Working on the notice and ordinance for the large-scale amendment to the Comp Plan based on the Evaluation and Appraisal Report (EAR) that was completed. We did a letter to the DEO (Dept of Economic Opportunity) last year stating that it was due to the State this month so it is a high priority.

FIRE CHIEF: not present –

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.

Speaker’s Card:

Skip Hard, Hard Lane, asked what penalties for infractions on sign regulations. Town doesn’t obey the sign regulations. CM Korn asked to respond; he asked Town Clerk and she said it was fine. Clerk Franklin asked to speak. The language is in the Sign Code, Article XIX and states political signs should not be placed sooner than 81 days before the election and that date is 8/19/17. Candidate placed the signs 84 days before the election. I miscounted and said he was clear to post the signs. Clerk Franklin also stated that this Council does not do proactive code enforcement; they only act if there has been a complaint and nobody complained. Clerk made the error not the candidate.

H. PUBLIC HEARINGS/ UNFINISHED BUSINESS/GENERAL ORDERS:

ORDINANCES FOR SECOND READING: 4 Public Hearings

2. ORD 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 adoption of Ord 2017-06

Public Hearing Opened:

Karlene Conroy – thinks it over reaches. Reiterate the comments that Atty Bohne made. 2g, 3a and b – already covered. In summation, she asked the Council to reconsider.

Public Hearing Closed.

Chair asked staff. Atty nothing.

MOTION: CM Kohler / CM Rivet to adopt Ord 2017-06.

Discussion: CM Kohler said it is a moral way of handling business of the Town.

CM Korn said make a motion support it, While he was at Conference he had asked some of the attendees and most of them had some type of in-house code of conduct. CM Rivet agrees. He understands Ms. Conroy’s concerns very seriously.

CM Ball said it is another level of bureaucracy – there is nothing we feel bad about. CM Rivet said it is not unreasonable to expect a code of conduct for Council or Boards.

CM Mahoney read another statement from the Karlene Conroy. These are attached to the minutes.

CM Rivet asked what she is opposing. One CM may sway more than another. Atty said this does not affect the citizens at all. She is very uncomfortable with this ordinance.

CM Korn was asked by someone to become a member when there is no pay. To do the best for the town. We volunteer because it is the right thing to do. There is nothing in the Ord to hurt any of Council or the residents.

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 Adoption of Ord 2017-07

Public Hearing Opened

Karlene Conroy objects for the same reasons as previously stated – it is over-reaching.

Public Hearing Closed.

Chair asked Atty. Atty said the Council currently has authority to remove any member from a Board. Removal from P&Z and BOA may have to follow due process for “cause”. This would create additional “for cause.”

MOTION: CM Rivet / CM Kohler to adopt Ord 2017-07.

Discussion: CM Ball said he does not have problem with any of this but doesn’t feel the need for additional bureaucracy. Atty said missing 3 mtgs and misfeasance and malfeasance are already addressed in code based on State law.

CM Mahoney – opposes for the 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 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 Adoption of Ord 2017-08

Public Hearing Opened: none

Public Hearing Closed.

Atty: we have current moratorium. (Post meeting note: We currently have regulations dealing with medical marijuana dispensaries.)

MOTION: CM Korn / CM Rivet to adopt Ord 2017-08.

Discussion: CM Korn this allows us time to come up with more regulations. Atty said if John Morgan wins his suit it changes a lot of things in his memo. CM Ball is for following the Atty recommendation. CM Rivet let's keep our eye on developments – he understands the compassionate reasons but also the attraction of unsavory element. CM Ball said as we spend our time getting to know our constituents and ask them. CM Ball can't turn our back on our voters. Get it sorted out. Atty said we must treat them the same as pharmacies.

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

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 COMMUNICATION INFRASTRUCTURE IN RIGHTS-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 Adoption of Ord 2017-09

Public Hearing Opened: none

Public Hearing Closed.

Atty said another moratorium due to State eroding more home rule. Adopting this will give us time to come up with regulations consistent with the State Law. The reason we have to do this by Jan 1, in order to have any control or we will lose the right to any control. Malabar does not have any current regulations for infrastructure. Atty received a bullet point Power Point presentation and he has not finished reviewing it. Mayor asked if we had a boiler plate ordinance. CM Ball asked if we know now what the state regulations will require. Atty said the State legislation is very detailed and he hasn't reviewed it all. There is no boiler plate to utilize because most municipalities have infrastructure regulations.

MOTION: CM Rivet / CM Kohler to adopt Ord 2017-09.

Discussion: CM Korn – has had discussions with other municipalities. Similar to HB 17 to take the local legislation away and gives it to State? If the State holds another spec session? Not likely.

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

UNFINISHED BUSINESS/GENERAL ORDERS - RESOLUTIONS: 0 - MISCELLANEOUS: 0
Attorney to leave. 8:30pm

I. DISCUSSION / POSSIBLE ACTION:

6. DISCUSS IMPACT FEES FOR MALABAR

Exhibit: Agenda Report No. 6

Recommendation: Discussion and Direction

Speakers card: Brian Vail, Smith Lane, would be in favor of impact fees – cost of admission to the Town. Only apply to new construction. He paid to improve his road and could have been looked at as an impact fee.

CM Korn started off. The new homes in the area have impacted the infrastructure. Sen Nelson spoke at conference.

New Development. A high of 7K and a low ?K - point is it would only impact the new construction. CM Korn said subdivisions already have code requirement to provide for parks and recreation or pay an equivalent fee.

CM Ball thought this could harm property owners doing major repairs.

Set for workshop discussion in October as budget will take up 9/11/17 and 9/25/17.

Clerk Franklin said Impact Fees only would apply to new development – new homes as principal structure. There would not be an additional impact if accessory structure was built. It is a onetime cost. Similar with commercial development. She gave example of an infrastructure impact fee for property owners building a new single family residence to offset the eventual cost to recap a paved road or maintain a dirt road. A parks and rec impact fee to offset the cost of maintaining the parks.

J. PUBLIC COMMENTS: 0

K. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Dist. 1: CM Ball: nothing

CM Dist. 2: CM Mahoney: wants the people to have benefits they pay for.

CM Dist. 3: CM Rivet: wanted to comment on recently received TRIM notice. Asked if the rest of Council received Florida Senator Latvala email - he opposes the push against Home Rule.

CM Dist. 4: CM Korn: went to FLC Conf and got a lot of information. DEP and Dept Ag offer assistance for stormwater projects and multi-use buildings. Met the Dist. 5 FDOT Secretary.

CM Dist. 5: CM Kohler: nothing

Mayor: Went to Bill Moroney's funeral and it was well attended. Town did the Irish-American Proclamation and presented to him over the years. He served on the Board of Adjustment and was also a volunteer with the Eagle Patrol. He and Denine attended it from Malabar.

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:

There being no further business to discuss and without objection, the meeting was adjourned by the Chair at 8:43 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 10/02/2017

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES
SEPTEMBER 25, 2017 7:30 PM**

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

A. CALL TO ORDER:

Council Chair, Patrick T. Reilly called the meeting to order at 7:30 pm. CM Ball led the prayer and pledge.

B. ROLL CALL:

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

For the record, Acting Chief Mike Foley is also present.

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

Chair asked – none heard.

D. ATTORNEY REPORT: Attorney spoke to last meeting about recording device. Florida law does not require the town to record the meetings. Law requires the Town to take minutes and once they are approved, they become the official record. Atty explained FS 286 and the statement on the bottom of every agenda face sheet advising that a desire to appeal a decision it is their responsibility to provide a verbatim recording. Any person has the right to record audio and/or video and it is not a public record. When the Town did video it became logistics problem in getting it archived and maintained for the retention requirement of one or two years. Anyone wanting a verbatim recording is welcome to do that as long it is not intrusive. Chair said it is on the October 2 agenda for Discussion, and Council will revisit that item.

E. STAFF REPORTS: ADMINISTRATOR: Two things. Received letter from Scott Knox regarding clear title on Huggins Park. Release of reverter clause on Huggins Park so it is free and clear. Second issue – was surprised to get an email about a sanitation issue on Rocky Point Road and more surprised to see that the email was forwarded to P&Z. The P&Z Board and the Town of Malabar have no jurisdiction on septic and sanitation issues; those are governed by the State of Florida Health Department through Brevard County. The problem Mr. Geil is experiencing was not caused by the Town. Both the TA and the Town Engineer have been out to his property and talked with him over the last several months regarding this issue. He has even talked to the Brevard County Health Dept officials on his behalf. The issue is between the two homeowners and the permitting body – the Florida Health Dept. He and the Town Eng. has consistently urged him to deal with the State Health Dept regarding his neighbors new septic drainfiled. **He is concerned that additional involvement by the Town may create a liability issue.**

CLERK: nothing

FIRE CHIEF: nothing at this time.

F. 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) **Five (5) Minute Limit per Speaker. None**

G. PUBLIC HEARINGS: 2nd Reading and PH on Ordinances setting Millage and Budget
1. Adopt Millage (Ord 2017-10)

Read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING THE MILLAGE RATE OF 2.0906 FOR THE LEVY OF AD VALOREM TAX WITHIN THE TOWN OF MALABAR FOR THE PERIOD FROM OCTOBER 1, 2017 THROUGH SEPTEMBER 30, 2018, AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1

Recommendation: Adopt Ord 2017-10

PH Opened – none. PH Closed

MOTION: CM Rivet / CM Kohler to adopt Ord 2017-10. Discussion: none

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

2. Adopt Final Budget (Ord 2017-11)

Exhibit: Agenda Report No. 2

Recommendation: Adopt Ord 2017-11

Read TITLE and Section 1 of Ordinance.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE FINAL BUDGET OF \$1,879,053.00 FOR THE PERIOD FROM OCTOBER 1, 2017 THROUGH SEPTEMBER 30, 2018; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1. The Town Council, in regular session duly assembled adopt the final Fiscal Year 17/18 Budget of \$1,879,053.00 consisting of \$1,625,193.00 for general fund expenditures and \$253,860.00 in approved expenditures for Stormwater projects funded through non-ad valorem fees.

PH opened: none. PH closed:

MOTION: CM Kohler / CM Rivet to adopt Ord 2017-11. Discussion: none.

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

Mayor read statement into record regarding the Council votes. Council approved the Code of Conduct and once a vote is completed on an item like the millage and budget, it becomes the Council action. This also applies to all the actions taken by Council.

H. UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)

ACTION ITEMS: ORDINANCES FOR FIRST READING: 0; RESOLUTIONS: 0

MISCELLANEOUS: 3

3. Authorize \$600.00 Expenditure for Parks & Rec Dept.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Chair asked for Representative from Park and Rec Board to speak. Annalie spoke on behalf of the Park Board and went through the presentation on the fitness course and the benefits to the community. Her friend, Joy Peters also worked on this and lives on Hardway Lane. She went through the benefits to the residents, the fire department and the community. It could become a meeting place. She would propose they also set up programs that change every week. Personal trainers and the fire Dept could use the programs. Working the legs – one time and the next time it could be changed around. As more donations come in – couple big tires – change it around to keep it interesting.

Encourage people to do a workout and encourage people to work out together. Encourage people to meet up there use as a starting place for a jogging course. Also, would like to encourage other people to use that as a starting point such as 5K groups that run through the park. Yoga or Zumba users could also use it as well as using as place to start a scavenger hunt. They are trying to come up with a maintenance dollar amount. She is looking for some commitment from Fire Dept to keep some attention on it as it benefits them as well. Annalie said they would like to use the dome at the Fire Dept and relocate it to the area where the course will be developed to protect items from the weather.

CM Ball has done the existing course. Some of the stations are worn out. He would like to know the new course would be maintained. Franklin said the exercise course around the lake consisted of 12 fitness stations and five stations for handicap and were purchased by FRDAP (Florida Recreational Development Assistance Program) grant funds in 1995-1996 and were installed by Town Public Works staff. They are 22 years old.

CM Rivet asked if there was money in current budget. Clerk Franklin stated that in the Agenda Report she reported that there were sufficient funds remaining in the current year to commit to this expenditure.

CM Mahoney asked if this could be a self-funded and tie it into the memorial wall they are going to do for people that have contributed to Malabar's development.

Mayor asked what would be stored in the dome – jumping ropes, kettle bells, etc. nothing of value and it would not be locked.

MOTION: CM Rivet / CM Kohler to approve the expenditure of \$600.00 as requested from current budget.

Discussion:

Vote: Ayes, 4 Nay 1. (CM Mahoney) Motion carried 4 to 1.

4. Authorization to Proceed with Paving of Eva Lane

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Chair asked TA to introduce – a properly prepared road with proper asphalt in order to last many years before needing addressing. Be done with this only because it is the only unpaved collector in the town. There was a question about speed bumps and that could be incorporated in the plan. He wasn't sure at the time of the last meeting but has since found out that we can. Speaker's Card: -

Skip Hard, We just came through a minor hurricane and yet saw significant flooding in this Town. He would ask you people to not spend a dime on roads when we can't drain the Town in less than three days.

Karen Moravecky – drainage issues are legitimate concerns. The town does have money – there is the means there. There has to be more than one issue that gets addressed. They were on the list when all the others that were being considered – it has the name as *lane* but it is a *collector*. It is a truly a Town road that can be used by everyone – not just the residents. When you look up Polycyclic Aromatic Hydrocarbons you can see the potential health hazards. The average speed is 35 – the dust is incredible; you can't even see the cars. If it truly a health hazard, they are all being harmed. The Council should honor the commitment made years ago. The residents are told they get the traffic and they get the dust – but the Town never wanted to maintain it. She recommends the Council approve this paving project.

David Ruip – 1830 Eave Lane, it was him and Karen and three others that went into the road improvement process together in 1984 for the north half of Eva Lane. When they put down base, it was shell from the shell pit on 192. That road was built to last and it could handle a hurricane and leave no puddles. But after years of grading the shell was pushed off and down and is gone – the Town put down the asphalt millings and that helped initially, but after potholes developed it couldn't be graded. He went around and got and got petitions signed and brought it back and presented it to Council and they have been waiting 14 years. He understands Skip's comments and the drainage issues will take more planning. The water has to be dealt with separately. Regarding speed bumps; they asked for an received reduced speed limit signs of 20 or 25 mph and at one time and it was enforceable by the BCSO. So, they could do that again.

MOTION: CM Rivet / CM Kohler to authorize TA to proceed with Paving of Eva Lane project as proposed. Discussion:

CM Mahoney read from a paper and handed it down to Clerk. (attached) CM Mahoney continued that the packet came out Friday evening. She has asked the P&Z Board and will attend their meeting on Wednesday and ask if the P&Z Council approved this paving project.

CM Mahoney stated she had been briefed all year, that we need to correct the stormwater before paving. She has heard from 20 people that are against this paving going forward and has only heard one in favor of it - tonight. She asked TA in email before hurricane for more information.

CM Rivet said whatever you call it it is a collector between Malabar and Hall Road. It is something that needs to be done. And if you look at the road criteria it is a collector. Take care of it now.

CM Korn – Back in 1987 when he moved here there was a CM that lived on that road. He had met many of the people on that road and it was their understanding that it was to be paved. At that time Weber Road was an unpaved road.

Mayor – 2 points: P&Z does not approve the pavement of roads; and this was discussed at several prior meetings.

CM Mahoney asked for the residents to be heard. Why has she been told for months that we have to do stormwater first.

TA responded to her regarding the stormwater. It is a major outfall but the ditches that flow on Eva Lane must travel under Malabar Road onto property that the Town has no jurisdiction over.

CM Ball is in support of paving Eva Lane and for years he has heard about it. The speed bumps are a concern for him. He stated the issue the Town had with speed bumps in Brook Hollow. If people want them they should have to deal with them.

CM Ball would like to start something that has not been done and that is to determine when the repaving will be needed and the estimated amount we need to do that and put a line item in budget – so that when that time arrives the money is there. It is high time to get this road paved.

CM Kohler said they all agreed that the drainage and roads are the two most critical issues. Show the residents that we are serious about tackling these issues.

CM Korn was asked what his platform was and he stated that it has always been the health, welfare and comfort of the residents. He suggests TA make sure the plans for the drainage don't create additional rework on the road paving. Regarding speed bumps they work but they also caused noise. Communicate their needs to BCSO and let them do speed enforcement.

Clerk Franklin stated about SW grant funding from the IRL tax – it was reviewed but not funded because they did not like the road paving included. The SW grant will be resubmitted and staff is looking at hopefully a favorable result.

Mayor asked about existing driveways and potential impact to existing residents. TA assured them that the elevations would not create adverse conditions for their driveways.

CM Mahoney said there is safety money available from FDOT and she hopes it is used for improvements at Corey and Weber intersections with Malabar Road.

Vote: Ayes, 4; Nay, 1 (CM Mahoney). Motion carried 4 to 1.

5. Authorization to Proceed with SW Imp south side of Atz Road between Smith Lane and Corey Road

Exhibit:

Agenda Report No. 5

Recommendation:

Request Action

TA introduced – SW is a larger issue in the town. - he somewhat agrees with Skip Hard. And he has spent a lot of time with the town engineer reviewing elevations, missing culverts, wrong elevations, or collapsed. However, to put things in perspective, the average cost is 5K for a culvert under a driveway – if we have 100 culverts failing – that is ½ million dollars. We also have metal pipes under the roads that are failing at average cost of 12K. They have plenty of places to spend their money. They are looking at two locations – Atz Road south side from Smith to Corey – town will contract out Hall Road from Flashy to Melb Tillman – town PW will do.

Went over his handout and showed the drop of 1/1000 of drop per foot – flat.

Went out for three bids and received one back. CDM submitted bid of \$112,836.00 for the drainage and replacement of the culverts and contour the ditch. It will be proof of concept to show residents that we do know what we are doing and are making forward progress. The Melbourne Tillman Canal is rarely full but we have standing water nearby. So, they can see what it costs to have a contractor do a job and see what it costs Town Staff to do the job. CM Mahoney asked if there was someone else we could get a competitive price from. TA also said They have a good record with this company and we could have piggybacked. Cason Lane – shot elevations and dug it to grade. Wires still down on Atz Road and asked them to get lines out of ditch but are still waiting.

MOTION: CM Kohler / CM Rivet to authorize TA to proceed with SW projects on Atz Road.

Discussion: CM Mahoney said that the Hall and Flashy to the Melb Tillman. Why are we not improving the very east end of Atz Road That was a small project that we started on the clearing? CM Kohler said the two biggest issues are roads and stormwater and that it is our properties and full support.

TA would urge all the citizens to ride up and down the roads in Town. We do have a SW problem in this town. TA said he put this up on thw website there are 9 outfalls and they all go through someone elses property to get to the ultimate place.

CM Rivet said we can appeal to the property owners civic to gain access?

CM Korn asked if there was legal way to go through private property. Atty said if they don't give approval. CM Korn can we use employees to do that work. Atty said yes they could use municipal public funds to benefit the Town.

Franklin said the hold harmless was given over the last 30 years and they were very cooperative. CM Mahoney said that is very interesting – the ditch is in their property. The people at that meeting. :

Vote: All Ayes.

I. DISCUSSION / POSSIBLE ACTION: 0

J. PUBLIC COMMENTS: 0

K. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Dist. 1: CM Ball: - hoping when they more forward with the road. – put in cost for future maintenance.

CM Dist. 2: CM Mahoney: Her is mostly questions – status of fall fest. What is being down on Leghorn – PW was observed on that road. She thought the road was being improved. Asked about John Geil – we have not been unresponsive from town since July. Webiste is missing Clerks email address and Dep Clerk's email. Suggestion to step up the communication lapse with the public – put the public records on Next Door Malabar as it is their community Center.

CM Dist. 3: CM Rivet: - nothing

CM Dist. 4: CM Korn: nothing.

CM Dist. 5: CM Kohler: Stated tonight was an important meeting and he hopes it sets the tone for the future year – Council knows that stormwater and roads are the major issues and they are taking steps to correct those problems.

Mayor: nothing

He stated that Speakers cards have to be submitted before the section on the agenda. One was submitted during reports and that is too late.

L. ANNOUNCEMENTS:

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

M. ADJOURNMENT:

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

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

Date Approved: 10/02/2017

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 2
Meeting Date: October 02, 2017

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

SUBJECT: Ordinance 2017-12 Regulations for Wireless Infrastructure within Malabar

BACKGROUND/HISTORY:

The Attorney presented this after much research on the impact of the State legislation on Wireless Communications within the Town ROWs.

Council had previously adopted a moratorium with Ord 2017-09 to allow time to develop these regulations.

Attorney recommends approval of First reading of this ordinance.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Ordinance 2017-12

ACTION OPTIONS:

Request Approval of First Reading

ORDINANCE. 2017-12

AN ORDINANCE OF THE TOWN OF MALABAR, TO IMPLEMENT THE REGULATORY AUTHORITY PROVIDED IN 2017 HOUSE BILL 687, THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT; AMENDING CHAPTER 13 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES; CREATING ARTICLE IV SMALL WIRELESS FACILITIES IN RIGHT-OF-WAYS; PROVIDING FOR DEFINITIONS, AND PURPOSE, PENALTIES, EMERGENCY REPAIR OR REMOVAL; PROVIDING FOR SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES; PROVIDING FOR A PERMIT APPLICATION AND REVIEW PROCEDURE; PROVIDING FOR BONDING REQUIREMENTS, INDEMNIFICATION AND INSURANCE; PROVIDING FOR WAIVERS AND APPEALS; PROVIDING FOR ABANDONMENT, TERMINATION AND REMOVAL; PROVIDING FOR SEVERABILITY, CODIFICATION; CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the Town has acquired, built and maintained rights-of-way throughout the town to promote the general health, safety and welfare of its citizens and the travelling public; and

WHEREAS, utilities and communication services locate their facilities in the rights-of-way to ensure all citizens receive adequate service; and

WHEREAS, in 2017 the Florida Legislature enacted HB 687 to create the Advanced Wireless Infrastructure Deployment Act (Act) and establish a uniform procedure by which wireless communication providers may collocate certain small wireless facilities on, under, within, or adjacent to certain utilities poles or wireless support structures within public rights-of-way under the jurisdiction and control of a municipality; and

WHEREAS, connectivity demands have driven exponential growth in the wireless communications industry and are anticipated to grow at an accelerated rate as new technology becomes available and demand for data increases; and

WHEREAS, the Town council recognizes that wireless connectivity is a vital component of the daily lives of Malabar residents, citizens and visitors; and

WHEREAS, proper management by the Town is necessary to reasonably balance the potential inconvenience to and negative effects upon the public from such facilities' placement and maintenance in the public rights-of-way against the benefits that accrue from such placement and maintenance of wireless facilities; and

WHEREAS, it is the intent of the Town Council to exercise its authority to adopt reasonable rules and regulations pertaining to wireless communication facilities to the fullest extent allowed by federal and state law; and

WHEREAS, the Town Council has determined it is in the best interest of the public health, safety and welfare to adopt this Ordinance.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Malabar, Brevard County, Florida:

SECTION 1. A new Article IV is hereby added to Chapter 13 of the Code of Ordinances of the Town to read as follows:

“ARTICLE IV. SMALL WIRELESS FACILITIES IN RIGHT-OF-WAYS

Sec. 13-70. Definitions, and purpose.

(a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

Applicant means the record owner or an owner's representative of a tract of land that is applying for a permit under this section.

Collocate or collocation means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

Easement means the right, privilege, or interest that one party has in the land of another. This may include utilities, drainage, ingress and egress, or other public or private uses subject to the right of use designated in the reservation of the servitude. For the purpose of this article, easement permitting pertains to publicly controlled easements.

FCC means the Federal Communications Commission.

Licensed contractor means a contractor licensed by the State of Florida to perform general construction contracting, underground construction or electrical work.

Micro wireless facility means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

Performance security means 125 percent of the construction cost of improvements to be posted with the town by the applicant for all improvements made within town controlled rights-of-ways and/or easements.

Person means any person, firm, partnership, association, corporation, company or organization of any kind.

Public rights-of-way or Rights-of-way means property or any interest therein, including easements, which is acquired for or devoted to a public road, including but not limited to, roadways, highway, street, or bridge for which the Town is the jurisdictional authority and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface.

Road or street means a way which affords the principal means of access by vehicles to abutting property, streets, sidewalks, alleys, highways, and other ways open to travel to the public or private residents and includes all areas within the rights-of-ways or easements in which such ways are located.

Small wireless facility means a wireless facility that meets the following qualifications:

a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

Support structure means a wireless support structure or utility pole proposed for utilization for the collocation of small wireless facilities.

Substantial modification means the mounting of a small wireless facility on a utility pole or wireless support structure in a manner that: (a) increases the height of the utility pole or wireless support structure by ten percent (10%) of the original height of the utility pole wireless support structure or greater; or (b) adds an appurtenance to the utility pole or wireless support structure

that protrudes horizontally from the utility pole or wireless support structure more than the width of the utility pole or wireless support structure and existing appurtenances. A modification that defeats the purpose of any exiting concealment elements is also considered a substantial modification. A substantial modification is not a waiver to the maximum allowable height.

Utility pole means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless the town administrator grants a waiver for such pole.

Wireless facility means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

- a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- b. Wireline backhaul facilities; or
- c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider means a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

Wireless provider means a wireless infrastructure provider or a wireless services provider.

Wireless services means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

Wireless services provider means a person who provides wireless services.

Wireless support structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

(b) Purpose.

- (1) To insure that a proposed improvement within a town-controlled right-of-way or easement is non-injurious to the public use or any contiguous and/or other directly affected properties.
- (2) To provide guidelines and procedures to ensure that the permitted improvements contain the essential information and data, both graphic and written, necessary for the applicable town sections and departments, and the town council to reach fair and equitable decisions.
- (3) To provide the applicant with a specific set of procedures and exhibit requirements which, if followed as directed, will substantially reduce the applicant's probability of encountering unnecessary delays.
- (4) To set out and fully describe the policies and conditions under which the review of a site development plan will be evaluated.
- (5) To implement the local government regulatory authority granted in the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), Florida Statutes, and establish reasonable development standards for the location of small wireless facilities on town-owned utility poles, infrastructure or improvements in the public rights-of-way, while minimizing the potential negative impacts of such facilities. The wireless facilities and associated support structures permitted in this article include only such small wireless facilities and structures as defined herein.

Sec. 13-71. Penalty.

(a) It shall be unlawful for any person to construct any improvement or any part of an improvement within a right-of-way or easement dedicated to the Town without a valid permit (b) Any person damaging any town road or easement shall be required to either restore the road or easement to its condition prior to the damage, or shall pay to the town the sum of money determined by the town engineer and building department to be necessary to restore the road or easement to its condition prior to the damage.

(c) No person shall knowingly affix, install, place, attach, maintain, or fail to remove an unauthorized attachment to town-owned infrastructure or other property of the town on demand by the town or any authorized representative thereof.

(d) No person shall use an attachment on town-owned infrastructure or other property of the town to provide a service not authorized by a permit.

(e) It is a violation of this article to fail to pay the costs to remove abandoned improvements from the right-of-way as required in Sec. 13-80.

(f) Each unauthorized attachment or use is a separate offense. Each day a violation of this article continues is a separate offense.

Sec. 13-72. Emergency repair or removal.

Nothing in this article shall prohibit any utility company or owner of said improvement from repairing or removing improvements in a town right of way in the event of an emergency which threatens life or property. The person performing, or at whose direction the emergency repair, replacement, or removal is performed, shall, within 72 hours, apply for a permit if required, for the emergency repairs and shall repair and replace any damage to town improvements caused by emergency repair or removal.

Nothing in this article shall prohibit the emergency removal of public or private improvements within a right-of-way or easement dedicated to the town by the town in the event of an emergency. In the event of such removal, the owner of the improvement shall be responsible for the cost of permitting and replacement of the improvement in accordance with this article.

Sec. 13-73. Small wireless facilities and support structures.

(a) General.

(1) Small wireless facilities and support structures that comply with the requirements of this article maybe installed and located within town public rights-of-way through the right-of-way/easement permitting process. The cost of maintaining such collocated facilities is the responsibility of the permittee.

(2) A person is not authorized to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

(3) Approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this division does not authorize the provision of any voice, data, or video communications services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way.

(4) Collocation of small wireless facilities or micro wireless facilities on a utility pole, unless otherwise permitted by federal law, is prohibited in the public right-of-way located within a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities.

(5) Collocation of small wireless facilities or micro wireless facilities on a town utility pole or placement of a wireless support structure is prohibited in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This limitation does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities.

(6) A wireless provider shall, in relation to a small wireless facility or support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements that prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the town administrator.

(b) Standards

(1) Height. The height of a small wireless facility is limited to 10 feet above the utility pole or wireless support structure upon which the small wireless facility is to be collocated. Unless waived by the town, the height for a new utility pole or wireless support structure is limited to the tallest existing utility pole or wireless support structure as of July 1, 2017, located in the same right-of-way, other than a utility pole or wireless support structure for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location. If there is no utility pole or wireless support structure within 500 feet, the height is limited to 50 feet. A structure granted a permit and installed pursuant to this subsection shall comply with state and federal regulations pertaining to airport airspace protections.

(2) If more than 220 volts are necessary for the operation of the small wireless facility and are utilized in the utility pole or wireless support structure, a sign shall be attached to the utility pole or wireless support structure stating in large, bold, high contrast letters (minimum height of each letter 4 inches): "HIGH VOLTAGE – DANGER."

(3) All small wireless facilities and support structures shall have a plaque placed upon it for the purpose of identification (either by the ASR registration number or other identifying information) including the party responsible for the operation and maintenance of the facility or

structure. The plaque shall not exceed 0.25 square feet. No other signage, other than a “high voltage – danger sign,” if applicable, or any signage required by the FCC, is allowed on a small wireless facility, utility pole or wireless support structure.

(4) All wiring and fiber shall be concealed within the support structure and all conduit, wiring and fiber shall be buried between structures and/or structures and ground mounted cabinets. All service lines (e.g. electric lines) to the support structure must also be buried unless service lines in the area of the support structure are aerial. In that event, service lines to the utility pole or wireless support structure may also be aerial, except for any service drop crossing a street or right-of-way which would need to be bored and placed under such street or right-of-way.

(5) New support structures and small wireless facilities shall be designed to blend into the surrounding environment and complement existing streetscape elements through the use of color, camouflaging and architectural treatment. Any equipment mounted to the support structures shall also match the support structure in color and general design. These design standards may be waived by the town administrator, in consultation with the town engineer, upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within 45 days after the date of the request.

(6) Any proposed new support structure shall be designed and engineered structurally, electrically and in all other respects, to accommodate both the initial small cell facility and one or more additional small wireless facilities.

(7) Small wireless facilities shall be flush-mounted onto support structures, unless it is demonstrated through RF propagation analysis that flush-mounted antennas will not meet the network objectives of the desired coverage area.

(8) All small wireless facilities and support structures shall be designed and constructed to conform to all applicable provisions of this article, the Florida Building Code, as amended, the Florida Department of Transportation Manual, as amended.

(9) All wireless facilities in the public rights-of-way shall comply with current radio frequency emissions standards of the Federal Communications Commission (FCC) and any other applicable FCC rules.

(10) All proposed collocations and ancillary equipment shall comply with the ANSI/EIA/TIA-222 (as amended) code for the town, if applicable.

(11) All small wireless facilities and support structures shall be constructed to conform with the requirements of the Occupational Safety and Health Administration (OSHA).

(12) All small wireless facilities, utility poles and wireless support structures shall be designed and constructed to conform to all applicable standards of the American National Standards Institute (ANSI) manual, as amended.

(13) All small wireless facilities and support structures must be located to avoid any physical or visual obstruction to pedestrian, bicycle, or vehicular traffic or to otherwise create safety hazards to pedestrians, bicyclists or motorists.

(14) The placement of small wireless facilities on existing support structures in public rights-of-way is encouraged and preferred over the installation of new support structures. An applicant must provide satisfactory evidence to the town that no existing support structures can be reasonably used or replaced for use for the proposed collocation.

(15) All new support structures must be constructed to permit collocation by other wireless service providers where feasible. The term "where feasible," as it applies to collocation, means that utilization of a support structure by another party would, at the time of such utilization, comply with sound engineering principles, would not materially degrade or impair the support structure's utilization by existing users, would not unduly burden the structural integrity of the support structure, and would not otherwise materially and adversely impact existing users. Reasonable terms for use of a support structure that may be imposed by the owner include a requirement for reasonable rent or fees, taking into consideration the capitalized cost of the support structure and land, the incremental cost of designing and constructing the support structure so as to accommodate additional users, increases in maintenance expenses relating to the support structure and a fair return on investment, provided such amount is also consistent with rates paid by other providers at comparable support structure sites.

Sec. 13-74. Permit application for small wireless facilities and support structures.

(a) A right-of-way/easement permit is required to (1) collocate a small wireless facility on a support structure; (2) install a new support structure for collocation; or (3) perform a substantial modification to an existing small wireless facility or support structure.

(b) Consolidated Application. An applicant seeking to collocate small wireless facilities may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities. If the application includes multiple small wireless

facilities, the town may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

(c) A permit is not required for:

(1) Routine maintenance;

(2) Replacement of existing small wireless facilities with small wireless facilities that are substantially similar or of the same or smaller size or same color and concealment;

(3) Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under Chapter 202, Fla Stat.

(d) An applicant shall demonstrate that the proposed small wireless facility, support structure or substantial modification complies with all applicable laws and ordinances.

(e) One hard copy and a digital copy of the application, plans and supporting documents shall be submitted to the building department. In addition to the standard permit submittal requirements, applications for small wireless facilities, support structures or substantial modifications shall submit plans which include the following:

(1) Name, address, phone number and email address of the applicant's primary contact person in connection with the application and the person to contact in case of an emergency.

(2) Evidence of and proof of insurance or self-insuring status adequate to defend and cover claims insurance coverage, if required by the town.

(3) A copy of federal or state certification authorizing the applicant to provide wireless services as a wireless services provider or telecommunications services as a wireless infrastructure provider.

(4) If the applicant is a corporation or limited liability company, proof of authority to do business in the State of Florida.

(5) For utilization of support structures not owned by the town, a notarized affidavit signed by an authorized representative of the support structure owner verifying consent to collocate on their support structure.

(6) An applicant for a new support structure must demonstrate that an existing structure is not reasonably available for collocation. A report and supporting technical data shall be submitted, demonstrating the following:

a. All antenna attachments and collocations, including all potentially useable cross country utility distribution towers, existing support structures and other elevated structures within the proposed service area and alternative antenna configurations have been examined, and found unacceptable.

b. Reasoning as to why existing facilities such as cross country utility distribution and other elevated structures or existing structures are not acceptable alternatives to a new support structure.

c. Reasoning as to why the adequacy of existing support structures or the mitigation of existing support structures are not acceptable in meeting the applicant's need or the needs of service providers shall consist of any of the following:

i. No existing support structures located within the geographic area meet the applicant's engineering requirements, and why.

ii. Existing support structures do not have sufficient structural integrity to support a small wireless facility and the existing support structures cannot be sufficiently improved.

iii. Other limiting factors that render existing support structures unsuitable.

(7) Signed statement from a qualified person, together with their qualifications, shall be included that warrants radio frequency emissions from the antenna array(s) comply with FCC standards. The statement shall also certify that both individually and cumulatively, and with any other facilities located on or immediately adjacent to the proposed facility, the replacement antenna complies with FCC standards. A copy of the radio frequency emissions report verifying

compliance with FCC standards shall be included with the signed statement. Any signage required or recommended by the FCC to warn of RF emissions associated with the small wireless facility shall be posted by the applicant on the support structure.

(8) A stamped or sealed structural analysis of the proposed tower prepared by a registered professional engineer licensed by the State of Florida indicating the proposed and future loading capacity of the utility pole is compliant with the Florida Building Code, as amended, or other applicable requirements.

(9) Title report or American Land Title Association (A.L.T.A.) survey showing all easements on the subject property.

(10) Simulated photographic depiction of the proposed and/or appearance from vantage points approved by the town, including the facility types the applicant has considered including:

- a. Overall height.
- b. Configuration.
- c. Physical location.
- d. Mass and scale.
- e. Materials and color.
- f. Illumination, if applicable.

(11) Proof of FAA compliance with Subpart C of the Federal Aviation Regulations, Part 77, and "Objects Affecting Navigable Airspace," if applicable.

(12) Signal propagation map for the purposes of determining potential interference with traffic control devices.

(13) All other documentation, evidence, or materials necessary to demonstrate compliance with the applicable approval criteria set forth in this article.

(14) Site Plan. Signed and sealed site plans shall include the following:

- a. Name of project and date
- b. The limits of right-of-way and limits of work where work shall be performed.

- c. The state plane coordinates and GIS coordinates of the proposed location.
- d. Deed book, survey book, road plat or official records book and page reference
- e. Scale, north arrow, and vicinity map
- f. Maximum height of the proposed structure and proposed and future mounting elevations of future antenna, including individual measurement of the base, support structure, and lightning rod.
- g. Location and size of all major public or private streets and rights-of-way.
- h. Depict and identify within a minimum of 50 feet of work all above ground infrastructure and improvements, including without limitation, pavement, curb, sidewalks, landscaping and vegetation, buildings, utility poles, etc. and all below ground infrastructure and utilities, including without limitation foundations, tanks, utilities. etc. within limits of work.
- i. Depict and identify all existing easements within limits of work and any additional easement(s) acquired (e.g., access easement, temporary construction easement or other easement) for construction of work. Easements must denote recording information.
- j. For new support structures, the location of existing support structures within a 100 foot radius and the height of existing support structures within 500 feet of the proposed structure in either direction on the side of the right-of-way.
- k. A statement or statements certifying that the construction of wireless communication facilities proposed to be located in the public rights-of-way will comply with all applicable standards, codes, rules and regulations referenced in this article.
- l. A statement describing the proposed support structure's capacity to permit multiple users, including an example of the number and type of

antennas or other attachments that can be accommodated on support structures.

m. Compliance with American National Standards Institute (ANSI) standards for electromagnetic radiation. In order to protect the public from excessive exposure to electromagnetic radiation, the facility applicant shall certify through a written statement that the facility meets or exceeds current ANSI standards as adopted by the FCC.

Sec. 13-75. Application and review procedure for small wireless facilities and support structures.

(a) A right-of-way/easement permit application for collocation of small wireless facilities, installation of a new support structure or substantial modification is subject to the application review timeframes in this section.

(b) Permit applications for new support structures must include an attestation that small wireless facilities will be collocated on the utility pole or wireless support structure and will be used by a wireless services provider to provide service within nine (9) months after the date the application is approved. A permit application for the collocation of small wireless facilities may be included with an application to install a new support structure.

(c) Determination of Completion/Defects. Within 14 calendar days after receiving an application, the town must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the town must specifically identify the missing information. An application is deemed complete if the town fails to provide notification to the applicant within 14 calendar days. If the town determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. An applicant that receives a written notice of incompleteness may cure the defects and resubmit the corrected application within thirty (30) calendar days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

(d) A complete application is deemed approved if the town fails to approve or deny the application within 60 calendar days after receipt of the application. If the town does not use the 30-day negotiation period provided in below, the parties may mutually agree in writing to extend the 60-day application review period. The town shall grant or deny the application at the end of the extended period

(e) Alternative location. The town may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative town utility pole or support structure or may place a new utility pole. The town and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the town of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the town of such non-agreement and the town must grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

(f) The town must notify the applicant of approval or denial by electronic mail. The town shall approve a complete application unless it does not meet the applicable codes. If the application is denied, the town must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the town denies the application. The applicant may cure the deficiencies identified by the town and resubmit the application within 30 days after notice of the denial is sent to the applicant. The town shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(g) Denial. The town may deny a permit application for a small wireless facility, support structure or substantial modification where:

- (1) the applicant fails to submit a complete application;
- (2) the applicant fails to supplement its application with additional information as requested in the evaluation of the application;
- (3) the applicant fails to pay the filing fee, if applicable;
- (4) the proposed installation or modification materially interferes with the safe operation of traffic control equipment.
- (5) the proposed installation or modification materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

(6) the proposed installation or modification materially interferes with compliance with the Americans with Disabilities Act, as amended, or similar federal or state standards regarding pedestrian access or movement.

(7) the proposed installation or modification materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual, as amended.

(8) the proposed installation or modification is not in compliance with the provisions of this article.

Sec. 13-76. Bonding requirements.

(a) Any permittee placing or installing any structure or object on town-owned utility poles, equipment or structures within the right-of-way shall ensure that, at least thirty (30) days prior to the commencement of any work on town utility poles, equipment or structures, performance security is provided to the town, in the form of a letter of credit, in a form deemed legally sufficient by the town attorney, bond or cash, posted in the amount of one hundred twenty five (125) percent of the estimated costs of replacing the utility pole or equipment or structure. Ten percent of that amount shall be provided as a cash bond. The estimate shall be prepared by an engineer registered in the State of Florida to practice professional engineering. Upon completion and approval of all permitted improvements, ninety (90) percent of the posted security will be released by the town. Ten (10) percent of the performance security shall remain in place at all times the attachment, structure or object remains installed or placed on town utility poles or other town-owned equipment within the public right-of-way. If at any time the security funds are not in place, the structure or object shall be deemed abandoned and shall be subject to removal pursuant to section 13-80.

Sec. 13-77. Indemnification and insurance.

(a) As a condition of a permittee having its improvements or equipment located in town public right-of-way or attached to town-owned utility poles, equipment or structures placed within the public right-of-way, the permittee agrees to and shall, to the extent permitted by law, defend, indemnify and hold harmless the town, its employees, officers, agents and contractors against any claim of liability or loss of any kind, including administrative orders and regulations, and specifically including, without limitation, any claim of liability or loss from personal injury or property damage resulting from or arising out of the presence of the permittee's equipment in the town right of way or

attached to town-owned utility poles, equipment or structures placed within the right-of-way and also as to any willful misconduct of the user, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the willful misconduct of the town, or its employees, officers, contractors or agents.

(b) The permittee's agrees as a condition of permit issuance to indemnify the town and pay the cost of the town's legal defenses, including fees of attorneys as may be selected by the town, for all claims described in the hold harmless clause above. Such payment on behalf of the town shall be in addition to any and all other legal remedies available to the town and shall not be considered to be the town's exclusive remedy.

(c) Any permittee placing or installing any structure or object on a town-owned utility pole, equipment or structure located within the public right-of-way shall ensure that, at least thirty (30) days prior to the commencement of any work the permittee provides to the town a certificate or certificates issued by an insurer or insurers authorized to conduct business in Florida that is rated not less than category A-VII by A.M. Best, subject to approval by the town, verifying the following minimum policy coverage amounts:

General Liability Insurance policy with a \$ 1,000,000 combined single limit for each occurrence to include the following coverage: Operations, Products and Completed Operations, Personal Injury, Contractual Liability covering the right-of-way/easement permit, "X-C-U" hazards, and Errors & Omissions.

Auto Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with a \$ 1,000,000 combined single limit for each occurrence.

Workers' Compensation and Employers Liability Insurance covering all employees of the permittee and subcontractors, as required by law.

In the event the permit activity involves professional or consulting services, in addition to the aforementioned insurance requirements, the permittee shall also procure and maintain a Professional Liability Insurance Policy in the amount of \$1,000,000 per claim.

In the event the permit activity involves services related to building construction projects the permittee shall also procure and maintain a Builders Risk Insurance Policy with loss limits equal to the value of the construction project.

(b) In addition to the above, Specialty Insurance policies covering specific risks of loss (including but not limited to, for example; Longshore coverage, Crane and Rigging, Inland Marine,

etc.) may be required by the town. Any additional specialty insurance coverage requirement will be dictated by the specific activity proposed under the right-of-way/easement permit and insurance underwriting standards, practices, procedures or products available in the commercial insurance market at the time of the contract inception. The permittee is required to procure and maintain all such specialty coverage in accordance with prudent business practices within the permittee's industry.

(c) The permittee shall provide certificates of insurance to the town demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under the right-of-way/easement permit. The certificates of insurance shall indicate that the policies have been endorsed to cover the town as an additional insured (a waiver of subrogation in lieu of additional insured status on the workers compensation policy is acceptable) and that these policies may not be canceled or modified without thirty (30) days prior written notice to the town. The policies shall remain effective until all wireless facilities are removed from town-owned utility poles, infrastructure or other improvements.

(d) The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of the permittee unless against any and all claims for bodily injury, sickness, disease, death, personal injury, damage to property or loss of use of any property or assets is caused in whole or in part by any negligent act or omission of the town.

(e) The town shall not be liable to a permittee, or any of its respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, use of rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if the town has been advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise that is related to, arises out of, flows from or is, in some part, caused by permittee's attachment to or use of town-owned infrastructure.

(f) A permittee may not construe a permit, correspondence, or other communication as affecting a right, privilege or duty previously conferred or imposed by the town to or on another person. The town reserves the right to continue or extend a right, privilege, or duty or to contract with additional users of town-owned rights-of-way without regard to resulting economic competition.

(g) A permittee is solely responsible for the risk and expense of installation, operation, and maintenance of the permittee's attachments, structures or improvements. The town does not warrant or represent that town-owned utility poles, equipment or structures are suitable for

placement of a permittee's attachments. A permittee must accept the town-owned infrastructure "as is" and "where is" and assumes all risks related to the use. The town is not liable for any damage to attachment(s) due to an event of damage to the pole or premises.

(h) A permittee may not transfer, assign, convey, or sublet a permit to collocate on town-owned utility poles, equipment or structures without the town council's prior written consent. A transfer, assignment, conveyance, or subletting of a collocation permit without the town council's prior written consent is not binding on the town. A written request to approve such a change shall be submitted to the town. A written response will be provided within 30 days of receipt of the request.

Sec. 13-78. - Waivers.

(a) Where the town administrator or designees, and affected agencies find that undue hardship or unreasonable practical difficulty may result from strict compliance with this article, the town administrator shall approve a waiver to the requirements of this article if the waiver serves the public interest.

However, if in the opinion of the town administrator, the intensity and location of the development warrants an evaluation by the town council, the town administrator may require that the applicant obtain council approval. The applicant shall be advised by the town, when it is determined that board action will be required.

(b) Conditions. An applicant seeking a waiver shall submit a written request to the town administrator for the waiver stating the reasons for the waiver and the facts which support such waiver. All requests for waivers must be submitted prior to or in conjunction with a right-of-way/easement permit application, preliminary plat, final engineering, or final plat approval, or other applicable land development application. A waiver, unless they determine the following:

- (1) The particular physical conditions, shape or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.
- (2) The granting of the waiver will not be injurious to the other adjacent property;
- (3) The conditions, upon which a request for waiver are based, are peculiar to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant; and
- (4) The waiver is consistent with the intent and purpose of the town zoning regulations, the town land use plan of the town and the requirements of this article.

(5) Delays attributed to state or federal permits.

(6) Natural disasters.

(7) The Town Engineer and affected agencies, applicable, concur that an undue hardship was placed on the applicant.

If the town administrator approves a waiver, the town engineer may attach such conditions to the waiver to assure that the waiver will comply with the intent and purpose of this Code.

Sec. 13-79. Appeals.

The town council shall hear appeals relating to any administrative decision or determination concerning implementation or application of these provisions, and shall make the final decision approving or disapproving the decision or interpretation. Any request for appeal shall be submitted to the town clerk within 30 calendar days of any decision or determination. The town clerk shall schedule a hearing before the town council within 30 calendar days of receipt of the written request. The request shall contain the basis for the appeal and appropriate fees. An administrative decision or determination may only be reversed or overturned by a four-fifths vote of the entire council entitled to vote on such appeal.

Sec. 13-80. Abandonment, termination and removal.

(a) A person does not have the right to place any object, structure or improvement in the public right-of-way or place an attachment or object on town-owned utility poles, equipment or structures located in the public right-of-way except as authorized in this article. If an unauthorized object, structure, improvement or attachment is discovered, the town may immediately remove it without incurring liability to the owner, and at the owner's sole expense, if the owner of the unauthorized attachment does not (1) remove the unauthorized structure or attachment within 3 business days of notification; or (2) apply for permission to have the attachment on town-owned infrastructure within 3 business days of notification, including payment of applicable charges or penalties.

(b) Any object, structure, improvement or attachment located in the public right-of-way may be removed immediately by the town if necessary to protect public safety or prevent imminent damage to town-owned utility poles, equipment or structures.

(c) Notwithstanding any section of this article to the contrary, the town may terminate any permit or authorization to locate utilities and associated infrastructure or attachments thereto in the public right-of-way, when determined by the town engineer as necessary to accommodate a town right-of-way or traffic safety improvement project. Such utilities, associated infrastructure or

attachments shall be removed as soon as practicable with a time frame coordinated by the town engineer. The permittee or utility is responsible for any removal and relocation costs.

(d) Any permitted attachment to a town-owned utility pole, infrastructure or other improvement that is not operated for a continuous period of three (3) months shall be considered abandoned. The failure to pay any required fee adopted by the town council for the location of an attachment on a town-owned utility pole, infrastructure or other improvement is also deemed abandonment. The owner of such facility shall remove the same, including any antennas, attachments, other related appurtenances, and equipment enclosure, within 30 days of receipt of notice from the town notifying the owner of such abandonment. Any new support structure that does not collocate a small wireless facility to provide service within nine months after the date the support structure permit is approved is considered abandoned.

(1) If there are two or more service providers using a single utility pole or wireless support structure, then the abandonment period for the structure shall not begin until all such service providers have ceased operation.

(2) If, within the 30-day notice period, the abandoned small wireless facility or support structure is not removed the town shall have the authority to remove said facility.

(e) The failure to comply with this section will result in immediate removal of the object, structure, improvement or attachment by the town and the imposition of penalties as described herein. The public right-of-way shall be restored to its original condition prior to the construction of the structure or improvement at the expense of the owner or permittee. The town will invoice the owner or permittee for all costs associated with removal and restoration, plus a 10 percent penalty fee.

SECTION 2. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 3. Inclusion in Code. It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar, and that the sections of this ordinances may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 4. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code or regulations, the more restrictive shall apply.

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	_____

This ordinance was then declared duly passed and adopted this 16th day of October 2017.

TOWN OF MALABAR

Mayor Patrick T. Reilly, Council Chair

ATTEST:

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

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

First Reading: 10/02/2017 Vote to _____
Second Reading: 10/16/2017

TOWN OF MALABAR". AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: October 02, 2017

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

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

BACKGROUND/HISTORY:

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

T&G wanted a trail crossing at Marie Street for the Sandhill Trail running north / south in that area. They also spoke in support of the multi-use trail on the north side of Malabar Road between Marie Street and Malabar Woods Boulevard, as did the Malabar Parks and Recreation Board and Council. Many residents and Council Member also spoke of taking the needed right-of-way from the north side of SR514 to the property owners with residences are not harmed on the south side. There was also a concern that the Disc Golf Park should be left whole and the needed ROW be taken from the north side.

Some residents and Council Members did not understand why there had to be a typical suburban design – why not just widen the road so traffic can flow and cars can pull off the roadway as necessary. The additional cubing on a median and limited left turn areas was a concern.

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

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

FINANCIAL IMPACT: none

ATTACHMENTS:

- Reso 15-2017

ACTION OPTIONS: Council Action of Reso 15-2017

RESOLUTION 15-2017

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

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

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

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

WHEREAS, the recommended alternatives support the Town's desired goals to limit impacts to private property and the Disc Golf Course; and,

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

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

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

SECTION 1. Findings:

1. The **WHEREAS** statements are true and correct.
2. The Town of Malabar supports the recommended alternative of SR 514 Malabar Road, including updated sections from Weber to Marie Street as follows:
 - a. Weber Road to Corey Road: Four-lane suburban typical section that features two (2) vehicular lanes in each direction of travel, a bike lane in each direction of travel, and sidewalks on both sides; and
 - b. Corey Road to Marie Street: two-lane Rural typical section that features one (1) vehicular lane in each direction of travel, paved shoulders on both sides, and a multi-use trail on the north side; and
 - c. Installation of Trail Crossing at Marie Street in alignment with the Sandhill Trail; and

- d. Roundabouts at the intersections of Malabar Road with Weber Road and Corey Road.
- 3. The Town of Malabar will provide ongoing maintenance to the paved multi-use trail on the north side of Malabar Road from Malabar Woods Boulevard to Marie Street.

SECTION 2. Distribution:

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

SECTION 3. Severability.

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

SECTION 4. Conflict.

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

SECTION 5. Effective Date.

This Resolution shall take effect immediately upon passage.

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

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

This Resolution was then declared to be duly passed and adopted this 2nd day of October, 2017.

By: TOWN OF MALABAR

Mayor Patrick T. Reilly,
Council Chair

(seal)

ATTEST:

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

Approved for Legal Sufficiency:

Karl Bohne, Jr.
Town Attorney

From: Douglas C. Hoyt
Sent: Friday, September 22, 2017 8:24 AM
To: 'Poteat, Victor P'
Cc: Pat Reilly
Subject: SR-514

Tracking:	Recipient	Delivery
	'Poteat, Victor P'	
	Pat Reilly	Delivered: 9/22/2017 8:27 AM

Good Morning Victor,

After closely observing SR-514, Malabar Road, for the last 20 months, particularly the peak travel times in the morning and evenings, I am still concerned with the proposed future changes to the roadway.

Specifically, the traffic flow from Corey Road to the east (US-1 intersection) becomes a stop and go situation at peak traffic periods. After carefully reviewing the proposed plans for the 4 lanes at the western of SR-514 between Weber Rd and Corey Rd with roundabouts at the Weber and Corey intersections, I fail to understand how overall traffic flow will be improved from Corey Road eastward.

Much of the peak traffic flow appears to be between Babcock Street and US-1. The two intersection treatments could be expected to slow the traffic down, thus achieving one of the goals of the Town. On the downside with the 4 lanes for only half of the distance, the eastern 2 lane section prior to US-1, even with improvements to width, sidewalks, etc. will continue to be an impediment to the current traffic load let alone future requirements.

I believe with the western portion of Malabar Road improved and continuing population growth in Brevard County, traffic will increase on this connector between I-95 and US-1. Will the eastern portion be adequate for the task? The two lanes don't appear to satisfactory now, how will cosmetic improvements in this portion of Malabar Road resolve this concern?

Victor, I am in full support of improving SR-514, just voicing some observations after traveling this road 6 to 8 times a day for the last two years and seeing the traffic load increase.

Looking forward to your visit on October 2nd.

Regards,

Doug

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 4
Meeting Date: October 02, 2017

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

SUBJECT: Discussion regarding Audio and Video recording of Town Meetings

BACKGROUND/HISTORY:

Mayor Reilly, Council Chair directed this to be placed on the agenda for discussion.

FINANCIAL IMPACT: unknown

ATTACHMENTS:

- none

ACTION OPTIONS: Council Discussion

Agenda # 4

Douglas C. Hoyt

From: Pat Reilly
Sent: Monday, September 25, 2017 9:12 AM
To: Douglas C. Hoyt; Dick Korn; Grant Ball; Laura Mahoney; Richard Kohler; Steve Rivet (srivet@cfl.rr.com)
Cc: Debby Franklin; Denine Sherear; Matt Stinnett; 'Dawn Danielson'
Subject: Re: Streaming Video of RTCM?

We can add this as an Agenda Item for Discussion at the October 2nd Council meeting.

Pat Reilly

From: Douglas C. Hoyt
Sent: Monday, September 25, 2017 8:22 AM
To: Pat Reilly; Dick Korn; Grant Ball; Laura Mahoney; Richard Kohler; Steve Rivet (srivet@cfl.rr.com)
Cc: Debby Franklin; Denine Sherear; Matt Stinnett; 'Dawn Danielson'
Subject: FW: Streaming Video of RTCM?

To All,

Please read the suggestion for an improvement of communications with the Citizens of Malabar.

Regards,

Doug

Douglas C. Hoyt
Town Administrator



Town of Malabar
2725 Malabar Road
Malabar, FL 32950

dhoyt@townofmalabar.org
Office 321-727-7764 x13
Cell 678-522-1691
Fax 321-727-9997

Be part of the solution – not part of the problem.

Please Note: Florida has a broad public records law. As a result, any written communication created or received by Town of Malabar officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public record. If you do not want your e-mail address released in response to a public record request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

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

From: Dawn Danielson [mailto:dawn.danielson@gmail.com]
Sent: Friday, September 22, 2017 2:02 PM
To: Douglas C. Hoyt <dhoyt@townofmalabar.org>
Cc: Steve Rivet <cmdist3@townofmalabar.org>; Laura Mahoney <cmdist2@townofmalabar.org>; Grant Ball <cmdist1@townofmalabar.org>; Richard Kohler <cmdist5@townofmalabar.org>; Dick Korn <cmdist4@townofmalabar.org>
Subject: Streaming Video of RTCM?

Hi Doug,

It *is* possible to have live video streaming of council meetings (which also can be archived). A simple web cam and mic would allow residents unable to attend the ability to watch and hear information first hand.

Then we would have a better informed community!

If we, the community, were to provide the webcam and microphone, would you be willing to implement it into the RTCMs?

Regards,
Dawn