

**TOWN OF MALABAR  
REGULAR TOWN COUNCIL MEETING  
MONDAY, MARCH 18, 2019  
7:30 PM  
2725 MALABAR ROAD  
MALABAR, FLORIDA**

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**AGENDA**

- A. **CALL TO ORDER, PRAYER AND PLEDGE**
- B. **ROLL CALL**
- C. **APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:**
- D. **CONSENT AGENDA:**
  - 1. **Approve Regular Town Council Meeting Minutes of 3/04/2019**
    - Exhibit: Agenda Report No. 1
    - Recommendation: Approve Minutes
- E. **ATTORNEY REPORT:**
- F. **BCSO REPORT:**
- G. **STAFF REPORTS:**
  - Administrator; Clerk
- H. **PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) **Five (5) Minute Limit per Speaker.**
- I. **PUBLIC HEARINGS: 0**
- J. **UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)**
- K. **ACTION ITEMS:**
  - ORDINANCES for FIRST READING: 0**
  - RESOLUTIONS: 1**
    - 2. **Appoint Barbara Cameron to Trails and Greenways Committee (Reso 04-2019)**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF BARBARA CAMERON TO THE MALABAR TRAILS & GREENWAYS COMMITTEE AS AN ALTERNATE MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

      - Exhibit: Agenda Report No. 2
      - Recommendation: Adopt Reso 04-2019

**MISCELLANEOUS: 2**

- 3. **Approve Recommendation from Park & Recreation Board for a Memorial Wall at the Malabar Community Park**
  - Exhibit: Agenda Report No. 3
  - Recommendation: Approval of Request

4. **Approve Cell Tower Easement, 1830 Malabar Road**  
**Exhibit:** Agenda Report No. 4  
**Recommendation:** Approve Easement Agreement

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

L. **DISCUSSION/POSSIBLE ACTION:**

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

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

O. **ANNOUNCEMENTS:**

(2) Vacancies on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board  
(2) Vacancies on the Trails and Greenways Committee

P. **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: March 18, 2019**

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

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**SUBJECT: Approval of Minutes**

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**BACKGROUND/HISTORY:**

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

- Town Council Regular Meeting – 3/4/2019

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

**ATTACHMENTS:**

Draft Minutes of 3/4/19

**ACTION OPTIONS:**

The Town Clerk requests approval of the minutes.

**MALABAR TOWN COUNCIL REGULAR MEETING MINUTES**

**MARCH 04, 2019**

**7:30 PM**

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

**A. CALL TO ORDER:**

Chair, Mayor Patrick Reilly called the meeting to order at 7:30 pm. CM Korn led P&P.

**B. ROLL CALL:**

CHAIR:

MAYOR PATRICK T. REILLY

VICE CHAIR:

STEVE RIVET, excused

COUNCIL MEMBERS:

GRANT BALL

BRIAN VAIL

DICK KORN

DANNY WHITE

MATT STINNETT

KARL BOHNE, excused

DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

Clerk said the Fire Chief Mike Foley and the PW Director Tom Millore were also present.

**C. APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:** CM White asked if they could add further discussion on SW project approved at the special meeting on 2/25/19. This was added as Discussion / possible action. Mayor added the cell tower lease memo from Attorney that they were provided at their seats.

**PROCLAMATION:** Irish American Heritage Month - March. Mayor read and presented to his dad.

**D. CONSENT AGENDA:**

**1. Regular Town Council Meeting Minutes 2/04/19**

**MOTION:** CM Korn / CM Vail to approve the 2/4/19 regular meeting minutes as submitted.

Discussion: none. **Vote:** 4 Ayes, 0 Nay

**Special Town Council Meeting Minutes 2/25/19**

**MOTION:** CM Ball / CM White to approve the 2/25/19 Special meeting minutes as submitted.

Discussion: none. **Vote:** 4 Ayes, 0 Nay

**Town Council Workshop Meeting Minutes 2/25/19**

**MOTION:** CM White / CM Vail to approve the 2/25/19 workshop meeting minutes as submitted. Discussion: none. **Vote:** 4 Ayes, 0 Nay

**E. ATTORNEY REPORT:**

**F. BCSO REPORT:**

**G. BOARD / COMMITTEE REPORTS:**

Drew Thompson, Chair, T&G Com: not present

Eric Bienvenu, Chair Park & Rec Board: not present.

Wayne Abare, Chair, P&Z Board: not present.

**H. STAFF REPORTS:**

**ADMINISTRATOR:** TA has several calendar items. Military training April 8-19; Leadership training May 1-23; he will have his laptop and will be available. He proposed a workshop on March 14 – educational and he would like to invite P&Z to have the planner explain the concept of the overlay development. Council consensus to hold it on Thursday, March 14, 2019 at 2pm. TA also provided Council with a written PW schedule for work they hope to accomplish in March. TA proposed the next workshop to discuss Public Works issues for April 29, 2019 at 7:00pm. Council agreed. CM Ball thanked TA for the work schedule. This will make a big difference with constituents.

TA then briefed Council on his TPO/TAC report – 2040 long range plan – corrective action with Federal government. FAST (Fixing America's Surface Transportation Act). There will be Road Rangers operating on I-95 soon; coming to Flagler, Brevard and Volusia counties. Hours will be Monday-Friday 6:30am-8:30pm. The idea is to get disabled vehicles operational or off the road ASAP. He then went over the two work project amendments that impact Malabar the most and how the FDOT moves funding between projects based on what is ready to go forward. SR514 mitigation portion was moved from 2021 to 2023. Deferred to pay for the engineering cost overruns on Babcock Street project. CM White said most of them would agree that they don't care about the widening, they just want a traffic light at Corey.

**PW DIRECTOR:** Tom Miliore, provided report that documented the PW Dept accomplishments in February. Got 45 roads graded, 15 potholes repaired, also includes the edges of the roads. used ditcher on Elaine Lane, Atz Road and Hall Road. Used Gradall to clear ditches on both sides of Waring (appx 4K feet). They also responded to and resolved 12 citizen contact issues.

CM White complimented PW Director stating the north side of Hall Road looks good – Tom said they started today. CM Korn has noticed, we have been doing a good job of improving dirt roads, but brought up the issue of doing maintenance on unaccepted roads.

**FIRE CHIEF** – Chief referenced the printed report and noted the increases in responses. The total training hours is corrected to 153 from 55. Original report was corrected. CM Ball asked about the ladder truck. Yes, that is in the process of being removed from fire station property and the old fire truck. CM Korn asked about how to promote and fund to encourage additional training. Chief explained the EMTI process they are investigating with their Medical Director.

**CLERK:** Said she has been out but is back and will continue with the Code book updates.

I. **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, Speaker Card:**

J. **PUBLIC HEARINGS/SPECIAL ORDERS: 4**  
**2. Amend LDC (Ord 2019-01)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING SECTIONS 1-12.5 OF ARTICLE XII, ENTITLED "PROCEDURES FOR ADOPTING, SUPPLEMENTING OR AMENDING THE LAND DEVELOPMENT CODE" OF THE LAND DEVELOPMENT CODE OF THE TOWN; REMOVING THAT PORTION OF SECTION 1-12.5 OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO THE DECISION MAKING AUTHORITY OF THE PLANNING AND ZONING BOARD; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Ordinance read by title only.

Chair opened the Public Hearing (PH). No Comments. PH Closed.

**MOTION:** CM White / CM Ball to adopt Ord 2019-01.

Discussion: Legally advertised on 2/14/19.

Clerk Franklin explained that while reviewing the LDC for the land use and zoning change the staff identified a conflict in the language giving final authority to approve or deny such changes to the P&Z Board. The Attorney has corrected the wording.

**Roll Call Vote:** CM Ball, Aye; CM Vail, Aye; CM Rivet, excused; CM Korn, Aye; CM White, Aye. Motion carried 4 to 0.

**3. Amend LDC (Ord 2019-02)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO TABLE 1-3.3(A) IN ARTICLE III OF THE LAND DEVELOPMENT CODE, PROVIDING FOR FINDINGS; PROVIDING FOR NEW SETBACK ALLOWANCES IN RR-65 ZONING FOR ACCESSORY STRUCTURES ONLY; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Ordinance read by title only

Chair opened the Public Hearing (PH). No Comments. PH Closed.

MOTION: CM Vail / CM White to adopt Ord 2019-02.

Discussion: Legally advertised on 2/14/19.

This ordinance allows for reduced side and rear setbacks for accessory structures only and only in RR-65 zoning.

**Roll Call Vote:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Excused; CM Korn, Aye; CM White, Aye. Motion carried 4 to 0.

**4. Amend LDC (Ord 2019-03)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE III, DISTRICT PROVISIONS, SECTION 1.3.3E AND TABLE 1-3.3(E) OF THE LAND DEVELOPMENT CODE, PROVIDING CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES ON CERTAIN ROADS, CORRECTING A SCRIVINORS ERROR AND REMOVING CONFLICT WITH COMPREHENSIVE PLAN ON RIGHT OF WAY WIDTH FOR MINOR COLLECTORS AND REMOVING BRIAR CREEK BOULEVARD FROM LIST OF MAJOR COLLECTOR STREETS; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Ordinance read by title only.

Chair opened the Public Hearing (PH). No Comments. PH Closed.

MOTION: CM Ball / CM White to adopt Ord 2019-03.

Discussion: Legally advertised on 2/14/19.

Clerk Franklin stated that this ordinance clarifies language in Article III, District Provisions on when to use Table 1-3.3(A) and when to use Table 1-3.3(E). It also removes two conflicts with the Town's Comprehensive Plan, removing Briar Creek Boulevard from the list of Major Collectors in Table "E" and changing the width of Minor Collectors to 70 feet as stated in the Town's Comprehensive Plan.

**Roll Call Vote:** CM Ball, Aye; CM Vail, Aye; CM Rivet, excused; CM Korn, Nay; CM White, Aye. Motion carried 3 to 1 (CM Korn).

**5. Amend LDC Art V regarding Setbacks (Ord 2019-04)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE AMENDMENT TO ARTICLE V, GENERAL PROVISIONS, SECTION 1-5.10 OF THE LAND DEVELOPMENT CODE, PROVIDING FOR CLARIFYING LANGUAGE FOR SETBACKS FOR PRINCIPAL STRUCTURES; PROVIDING FOR REFERENCE TO ARTICLE III DISTRICT PROVISIONS TABLE 1-3.3(A) AND TABLE 1-3.3(E) IN THE LAND DEVELOPMENT CODE; PROVIDING FOR CODIFICATION AND REPEAL OF ORDINANCES OR PART OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

Ordinance read by title only.

Chair opened the Public Hearing (PH). No Comments. PH Closed.

MOTION: CM Vail / CM White to adopt Ord 2019-04.

Discussion: Legally advertised on 2/14/19.

Clerk Franklin stated that this ordinance directs the applicant to use Tables 1-3.3 (A) or Table 1-3.3(E) in Article III, District Provisions.

**Roll Call Vote:** CM Ball, Aye; CM Vail, Aye; CM Rivet, Excused; CM Korn, Aye; CM White, Aye. Motion carried 4 to 0.

#### K. UNFINISHED BUSINESS/GENERAL ORDERS

#### L. ACTION ITEMS:

**ORDINANCES FOR FIRST READING: 0**

**RESOLUTIONS: 1**

##### 6. Adopt Resolution Providing FDOT Acquisition of Fern Creek 1.1-acre Parcel

**Exhibit:** Agenda Report No. 6

**Recommendation:** Approve Agreement

Discussion:

Council discussed the proposed intersection improvements.

**MOTION:** CM White / CM Vail to adopt FDOT Reso to Acquire Fern Creek Parcel with the condition if is for a center lane intersection improvement.

**Roll Call Vote:** CM Ball, Aye; CM Vail, Aye; CM Rivet, excused; CM Korn, Aye; CM White.

**MISCELLANEOUS: 0**

#### M. DISCUSSION/POSSIBLE ACTION:

##### 7. Hall Road, west end, stormwater project. (added)

CM White understands what they are doing on Hall Road. Here we have set a precedent that we will set a culvert if they pay for the pipe only. Why are we doing this for cosmetic reasons when we can be addressing Hall and Weber.

Mayor asked for the pipe on Flashy Lane. TA said it is cosmetic. CM Vail said the previous TA had tried to work with the property owners for participation. The overall cost would be less because we don't have to clean the ditches in the future. CM Vail said we own the promises made by previous Administrator.

**MOTION:** CM White / CM Korn to reconsider the motion made on 2/25/19 to approve the project minus the Flashy Lane portion of project.

Discussion: CM Ball asked if we should redo the bid. TA explained that each of the vendors knew that this Flashy Lane portion may be removed. TA said this doesn't need to be rebid – they selected the lowest based on all the other criteria.

**VOTE:** Aye, 2; (CM Korn, CM White) Nay, 2; (CM Vail, CM Ball. Mayor voted Nay to break the tie.

##### 8. Cell Tower Memo

TA stated that the Attorney's memo covers a few items that were unclear. The agreement was not finalized under previous Administrator for this reason. This is not a continuation of the lease with Crowne Castle. This will be a new easement with Crowne Castle and allows them use of the land for 30 years and provides them an additional 1000sf. They will reserve the land for 30 years but pays all the revenue in the first 20 years with a down payment of 10K.

**MOTION:** CM Ball / CM Korn to table until Attorney Bohne is present. It is just discussion.

Mayor asked that when it is brought back to have the picture of the area and the footprint of the proposed additional 1000sf. Chief asked to speak. His concern is the where the 1000sf area will be.

**N. PUBLIC COMMENTS: General Items (Speaker Card Required) none**

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

CM Ball: the calendar showing what we are doing and when and will make it better to tell constituents. Big kudos to TA

CM Vail: nothing

CM Rivet: excused

CM Korn: Continued on what CM White said about the FD. IOS rating and the response time is the lowest. Insurance costs are the lowest in the State. We have one of the lowest ad valorem. We need to provide for the needs of the people. Have adequate budget but don't be careless.

CM White: Thanked TA for the schedule and also for having it posted on website. It will end a lot of discussion. They went to an event on 2/14/19 and so did Drew Thompson at Cape Canaveral. Speaker brought up that it's not always about the cost; need to consider the value it brings to the Town. We get a lot of push back on the Fire Dept but how much value do they bring to the Town.. Same with the Trail Town designation. He likes the job TA is doing. CM Vail concurs.

Mayor: Next Monday is the SCLC dinner meeting. We are co-hosts and he looks forward to seeing you all there.

**P. ANNOUNCEMENTS:** Openings on Board of Adjustment, Trails and Greenways and Park and Recreation Board.

**Q. ADJOURNMENT:**

There being no further business to discuss and without objection, the meeting was adjourned at 9:23 PM.

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

ATTEST:

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

Date Approved: 3/18/2019

DRAFT



# TOWN OF MALABAR

## AGENDA ITEM REPORT

AGENDA ITEM NO: 2  
Meeting Date: March 18, 2019

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

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**SUBJECT:** Appoint Barbara Cameron to Trails and Greenways Committee (Reso 04-2019)

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**BACKGROUND/HISTORY:**

Board and Committee terms are for three years. There are two openings on the Trails and Greenways Committee.

Ms. Barbara Cameron submitted an application for this committee on 3/11/2019.

**ATTACHMENTS:**

Reso 04-2019 Barb Cameron to T&G Committee  
Application package from Ms. Cameron

**ACTION OPTIONS:**

Adopt Resolution 04-2019.

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MAR 1 2008

TOWN OF MALABAR

Town of Malabar Volunteer Committee/Board Application

Trails & Greenways (T&G) Committee Application

The T&G Committee is hereby established and shall consist of five (5) seats and two (2) alternate-seats. The Committee is established to deal with the specific subject of trails and greenways within Malabar and how they connect to the South Brevard Linear Trail system. The Committee shall gather information and present it to the Park and Recreation Board for referral to the Town Council. The Committee is advisory in nature but consults with trail groups from other agencies on trail related issues and forwards their recommendations to the Parks and Recreation Board for their consideration and recommendation to Council.

- 1. Name: Barbara K Cameron Phone: 321-508-5565
  - 2. Home Address: 665 Hall Rd Malabar FL
  - 3. Email Address: barb.kibling@hotmail.com
  - 4. Are you a resident of the Town: Yes  No
  - 5. How long have you been a resident of the Town of Malabar: Since 1974
  - 6. Are you currently involved with any other organization of the Town: Yes  No
- If yes, which organization: NA

Town of Malabar 2725 Malabar Road Malabar, Florida 32950  
Phone: 321-727-7763 ~ Fax 321-722-2234 ~ Email: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)  
Website: [www.townofmalabar.org](http://www.townofmalabar.org)

MAR 11 2019

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TOWN OF MALABAR

APPLICATION FOR APPOINTMENT TO BOARD/COMMITTEE

NOTE: Florida's Public Records Law, Chapter 119, Florida Statutes states, "It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person." Your application when filed will become a public record and subject to the above statute. In addition, any appointed member of a board of any political subdivision (except members of solely advisory bodies) and all members of bodies exercising planning, zoning or natural resources responsibilities are required to file a financial disclosure form within 30 days after appointment and annually thereafter for the duration of the appointment as required by F.S. Chap. 112.

NAME: Barbara K Cameron TELEPHONE: 321 508 5565  
ADDRESS: 665 Hill Rd Malabar FL 32950  
EMAIL: barbkubling@hotmail.com

RESIDENT OF TOWN FOR 12 MONTHS OR LONGER: [  ] YES [  ] NO

OCCUPATION: (If retired, please indicate former occupation or profession.)  
Retired Patient Representative Dental office

PROFESSIONAL AND/OR COMMUNITY ACTIVITIES:  
NA

ADDITIONAL INFORMATION/REFERENCES:  
I was the secretary for Trails + Greenway from 2001 - 2003

Please select the Board that you would like to serve on by indicating first choice & second choice:

- Board of Adjustment
- Planning & Zoning
- Parks & Recreation
- Trails & Greenways

Per Town Code, Council shall require removal of members after 3 successive absences.

Barbara K Cameron  
Signature of Applicant

3-11-2019  
Date

Please return this form to: Town Clerk  
Town of Malabar  
2725 Malabar Road  
Malabar, FL 32950-4427  
Email: townclerk@townofmalabar.org

Note: If you need more information concerning the duties of these Boards, please contact the Town Clerk. Please attach a copy of your resume to this application. You will be notified of the date of the Town Council Meeting that your application will be considered for appointment. You will need to plan to attend the Council Meeting.

(Rev. 12/2007)

RECEIVED

TOWN OF MALABAR



Town of Malabar

Volunteer Committee/Board Application

Applicant Certification

By completing this application with the Town of Malabar and placing my signature below, I do hereby acknowledge the following:

- This application, when completed and filed with the Office of the Town Clerk, is a PUBLIC RECORD UNDER Chapter 119, Florida Statute, and is open to public inspection.
- I am responsible for keeping the information on this form current and that any changes or updates will be provided to the Office of the Town Clerk.
- I acknowledge that I am a resident of the Town of Malabar.
- I consent to filing the Statement of Financial Interest as required by Chapter 112, Florida Statutes.
- If appointed to a Committee or Board, I acknowledge that it is my obligation and duty to comply with the following:
  - o Malabar Code of Conduct
  - o Code of Ethics for Public Officials (F.S., Chapter 112, Part III)
  - o Florida Sunshine Law (F.S., Chapter 286)

I understand the responsibilities associated with being a Committee or Board member and I will have adequate time to serve on this Committee or Board.

The information provided on this form is true and correct and consent is hereby given to the Town Council or its designated representative to verify any and/or all the information provided.

Babara K. Cameron

Signature

3-11-2019

Date

Town of Malabar 2725 Malabar Road Malabar, Florida 32950  
 Phone: 321-727-7763 ~ Fax 321-722-2234 ~ Email: [townclerk@townofmalabar.org](mailto:townclerk@townofmalabar.org)  
 Website: [www.townofmalabar.org](http://www.townofmalabar.org)

MAR 11 2019

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# TOWN OF MALABAR

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

## Town of Malabar Board Member Code of Conduct

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

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

I understand that an appointed Board or Committee Member does not manage the affairs of the Town. I will not intrude into daily operations or spheres of responsibility designated by Florida Statutes, Town Code, and Town Charter to the Town Administrator as the Chief Executive Officer; or undermine the Town Administrator's lawful authority. Further, I understand that the Town Administrator is responsible for administering the policy direction established by a majority vote of the Town Council and not the individual wishes of Board or Committee Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

As a Board or Committee Member, I will always hold the best interests of the citizens of the Town and the public health, safety and welfare of the community in the highest regard. I will seek to provide appropriate leadership that nurtures and motivates Town citizens to be stakeholders in the affairs and achievements of the Town.

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

Bartolomeo K. Cameron  
Signature

3-11-19  
Date

Dorothy Carmel  
Print Name

Dorothy Carmel  
Witness

**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 3**  
**Meeting Date: March 18, 2019**

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

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**SUBJECT: Recommendation from Park and Recreation Board**

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**BACKGROUND/HISTORY:**

Attached is the recommended design plan for a memorial wall at the Malabar Community Park. The Board recommends it be located by the three flag poles.

**ATTACHMENTS:**

Memo and design plans for memorial wall

**ACTION OPTIONS:**

Approve the plan


Direct staff to submit to DemandStar solicit bids



2725 Malabar Road  
Malabar, FL 32950  
321-727-7764 (Office) 321-727-9997 (Fax)  
[www.townofmalabar.org](http://www.townofmalabar.org)

# Memo

To: Debby Franklin, CMC, Town Clerk/Treasurer

From:  Dorothy Carmel, Parks and Recreations Board Secretary

Date: March 14, 2019

Re: Memorial Wall

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The Park Board has voted to submit the plans for the Memorial Wall to Council to put out for bids.

Also Vicky Thomas would like her wish list published in the Mail Boat, she did not want it in the Hometown News because she said no one reads it.



# **MALABAR PARKS AND RECREATION BOARD MEMORIAL PROJECT**

July 2, 2018

## **Project Background and Description**

After months of discussions, presentations and consideration, the Malabar Parks and Recreation Board would like to present the idea of creating a Memorial in the Malabar Community Park. The Memorial will be respectful, aesthetically pleasing, and compliment the unique sense of community that is the Town of Malabar.

The Board feels it would be nice to recognize those individuals who have added to our community or nation. Examples include former town officials and those who have served in the armed forces. If this is a project approved by the town, it would be nice to have it completed and ready for an event such as the Fall Festival.

This Proposal covers design and material options.

## 1. MEMORIAL WALL

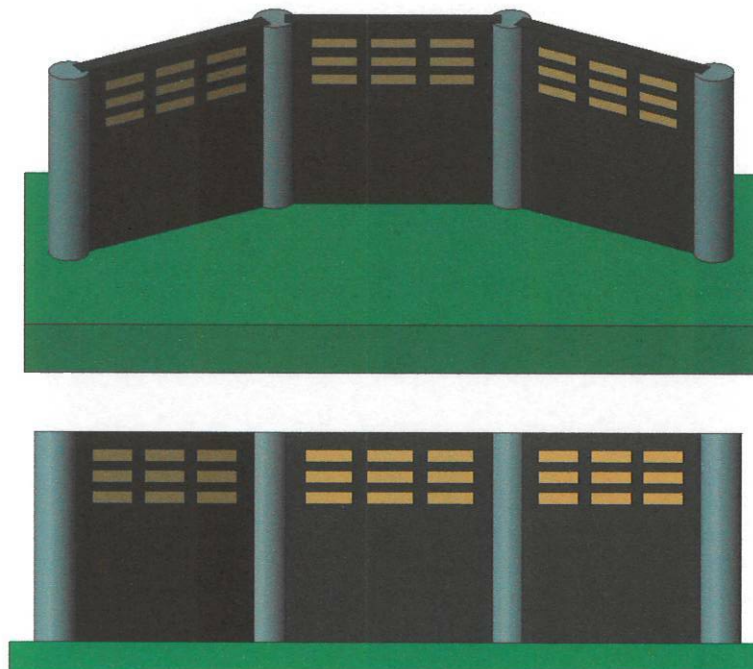
The Memorial Wall would be an expandable wall that would be placed in front of the flagpoles in the Community Park.

Initially it would start with only the center section but have the ability to expand by adding the outer wings. This amount of space should be sufficient for expansion over many years.

### Recommended Design

- Each section is approximately 10 feet wide by 5 feet high
- The wall should touch the ground
- The wall should be placed on a concrete slab, so that future lawn maintenance does not do damage
- Cap along the top edge to help with water drainage
- Plaques made of high quality materials
  - Granite
  - Brass
- Wall section materials
  - Polished concrete
  - Granite
  - Marble
- Columns
  - Poured concrete and built such that the walls slide into place via a notch in each column
- Base
  - Poured concrete slab

### Drawings





**TOWN OF MALABAR  
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 4  
Meeting Date: March 18, 2019**

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

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**SUBJECT: Cell Tower Easement, 1830 Malabar Road**

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**BACKGROUND/HISTORY:**

This was discussed briefly on March 4, 2019. Council wanted to hear from the Attorney and also see a site plan showing the proposed additional 1,000sf.

**ATTACHMENTS:**

Memo from Attorney Bohne  
Site layout and boundary survey

**ACTION OPTIONS:**

Action on Request

To: Mayor Pat Reilly and Town Council  
From: Karl W. Bohne, Jr., Town Attorney  
Date: 3/13/2019  
Re: Cell Tower Lease and New Easement Agreement

At the request of the town Administrator, Mr. Stinnett, please allow this memorandum to compare the existing leased agreement we have for the cell tower site against the proposed easement agreement for council's consideration.

As you recall the former town administrator was in discussion with the tenant of the current cell tower lease for what he believed was an extension of the lease. I truly believe that this was presented to the former TA as a lease extension; however, when I started my review, it became apparent that this was not a lease extension but rather a different proposal for occupancy of the cell tower site.

In email exchanges between the TA and "Crown Castle" the TA, asked at my request the following:

"The new agreement appears that we are assigning our rights in the existing lease with Crown Castle South LLC, to Crown Castle Towers 09 LLC? Why is this the case, our understanding was that we were just extending the existing lease, modified for the new time period?"

They replied as follows:

"No, you would be doing a term easement. That means the lease would be assigned over to us because it is tied to our master agreement and we would have a 30 year term easement to be paid out over 20 years with you. We would definitely have to renegotiate closer to when your payments stop if the tower is still needed at that time and you can either do another easement or just go back to a lease. But I'd offered you the ability to add on 30 additional years and remain in your lease but that isn't guaranteed money, which the easement is. Just so you know, in the lease, your rent will be reducing due to AT&T leaving but I'm trying to not only get you secured money with the easement but more money in today's money... we are purchasing an easement. "

So the council will need to determine how they want to proceed. To assist below is a comparison between the existing leased and the proposed easement.

#### A. The Current Lease

The current lease was executed on January 26<sup>th</sup>, 2006 by and between the Town and PJ Development, LLC. It was subsequently assigned to Crown Castle South, LLC. The leased property area is approximately 4,800 square feet. The initial leased term was for 5 years with 5 automatic renewal periods each being 5 years in length. So unless the lease is terminated there appears to be additional available years left on the lease. They initial base rent was \$14,000 per year plus additional rent of \$2,400 a year for each additional "Occupier" on the tower.

There is a 15% increase every 5 years.

The lease provides for the permitted uses of the leased area for constructing, maintaining and operating communications facilities and incidental uses. They are required to construct a security fence.

The lease contains provisions relating to insurance, as well as fairly standard boiler plate provisions.

It is a relatively straight forward lease arrangement.

#### B. The Easement Agreement

The existing lease will remain in effect, but under the new agreement we will assign all our rights under that lease to an entity known as CROWN CASTLE TOWERS 09 LLC (identified as "Crown" in the new agreement). This entity is a new entity in this arrangement and is also the entity proposed to be a party with the Town to the Easement Agreement.

According to the Assignment provision in the Easement Agreement the Town assigns to Crown all of it's right, title and interest in the Lease Agreement, ***including but not limited to, the right to amend the Lease Agreement: (i) to extend the term length; (ii) to increase the size of the leased premises within the Easement Area; and/or (iii) in any other manner deemed necessary by Crown.***

This means that Crown is now substituted in the place and stead of the Town and is the "Lessor" and essentially Crown now controls the lease.

The duration of the easement agreement is 30 years and does cover the same property area as described in the lease.

However, the Easement Agreement includes an irrevocable option to Crown to purchase a perpetual easement over a maximum of one thousand (1,000) square feet of real property adjacent to the current lease site on the same terms and conditions set forth in the Agreement. This additional property will need to be defined specifically if the council decides to go the easement route.

As far as compensation for the easement is concerned, the Town is entitled to a price of Five Hundred Eighty-Nine Thousand Six Hundred and 00/100 Dollars (\$589,600.00). The first payment is Ten Thousand and 00/100 Dollars (\$10,000.00) ("First Payment"). Thereafter, there will be two hundred forty (240) consecutive monthly installments of Two Thousand Four Hundred Fifteen and 00/100 Dollars (\$2,415.00). This is a 20 year payout.

They are buying the easement area from us for a period of 30 years. This area can be used as follows:

(i) constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and (ii) uses incidental thereto, including without limitation, testing of any kind, for Crown's use and the use of its lessees, licensees, and/or sub-easement holders.

The Town has no right to object to or approve any improvements to be constructed by Crown on the Easement Area. If requested by Crown, the Town will execute, at Crown's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Easement Area, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Crown in Crown's absolute discretion to utilize the Easement Area for the Permitted Use. The Town appoints Crown as its attorney-in-fact to execute all land use applications, permits, licenses and other approvals.

Although the lease says they *shall* construct a security fence the Easement Agreement states that they *may* construct such a fencing.

The Easement Agreement allows Crown to assign all its interest in the easement agreement to a third party without the Town's consent.

### C. Comparison

There are material differences between the current Lease and the Easement Agreement. First is the obvious, one is a lease and the other is an easement. The easement is one in “gross” which means it is personal and freely assignable. The easement area, 4,800 sq feet does not contain any exclusivity language.

However, there appears to be an exclusive right-of-way easement for ingress and egress, seven days per week, twenty-four hours per day, on foot or motor vehicle, including trucks, along a thirty foot wide right-of-way extending from the nearest public right-of-way, together with the right to install, replace and maintain utility wires, poles, cables, conduits and pipes. This exclusivity also appears in the lease. The width of the easement right of way in the lease is 20 feet and the width in the easement is 30 feet.

As I have stated before, under the lease we are the Lessor and pursuant to the Easement Agreement we would assign our rights as Lessor to Crown and lose all rights under the lease. That means that Crown controls the lease including all the rights and privileges as Lessor, including the right to change the lease, *unless*, we reserve certain rights, including the right of consent to amend the lease.

The easement agreement would appear to financially benefit the town. The easement agreement would seem to increase the net amount the town receives; however, the easement agreement does not provide for any additional sums for additional carriers being put on the tower. If you recall the lease had a base rent plus a sum for additional carriers on the tower.

The distinction between a lease and an easement is one of property rights. A lease is an agreement in which the landlord agrees to give the tenant the exclusive right to occupy real property, usually for a specific term and, in exchange, the tenant agrees to give the landlord some sort of consideration. A lease transfers to the tenant a leasehold interest in the real property or for our purposes an exclusive right to occupy the premises. An easement, gives the permission of the owner to use or prevent the use of the owner’s real property. However, unlike a lease, it transfers to the easement holder an interest in the real property that encumbers the record title. Easements are classified as either appurtenant (benefiting and transferable with a specific piece of real property) or in gross (personal to the grantee).



With respect to the pros/cons of using one method or the other, the choice comes down to whether the rights the town wants to give Crown are mere possessory or an interest in land. The easement does affect the marketability of the land during the term of the easement assuming the town desired to ever “sell” the property. The lease doesn’t necessarily affect marketability.

Also, regardless of the common definition of each, the written agreement will control the rights and responsibilities of the parties and these agreements can define the relationship beyond the simple labels of “lease” and “easement”. Generally, if the occupancy and use will be exclusive a lease is used. If it’s a shared use an easement can be used; however, an easement can be exclusive. An easement, being an interest in property, restricts the Town on what the town can do on the property. The Town could not do anything to the easement area. In a lease the Town could still have some control over the property to the extent the lease agreement does not otherwise provide. As a general rule, an easement holder has a right to do whatever is reasonably convenient or necessary in order to enjoy fully the purposes for which the easement was granted. Such a right does not accompany a lease relationship and only those rights granted by the lease are enjoyed by the Lessee. Put another way a Lessee does not have a right to do whatever is reasonably convenient or necessary to enjoy the lease.

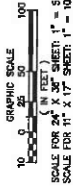
A lease has less impact on future marketability because the lease and the right to receive payments run with the land. The proposed easement does have a pay plan, however, full payment can be made at any time and if so paid early, a new buyer receives no payments but still is subject to the burden of the easement.

We need to ask Crown...why and easement and not a lease?

Remember our lease rate increases 15% every 5 years. There is no increase in payments under the easement. We need to determine the value difference between the remainder of the lease and the easement purchase priced.

# BOUNDARY SURVEY

IN SECTION 36, TOWNSHIP 28 SOUTH, RANGE 37 EAST  
BREVARD COUNTY, FLORIDA  
FOR: CROWN CASTLE



## SURVEYOR'S NOTES

1. BEARINGS HEREON ARE REFERENCED TO THE ASSUMED BEARING OF NORTH 00°07'12" EAST ALONG THE WEST LINE OF THE PARENT PARCEL.
2. UNDERGROUND UTILITIES SHOWN HEREON ARE LIMITED TO OTHERS; NO SUB-SURFACE INVESTIGATION WAS PERFORMED BY THIS OFFICE.
3. THE BOUNDARY SURVEY SHOWN HEREON IS BASED ON THE SURVEY RECORDS AND OBSERVATIONS DATED SEPTEMBER 14, 2016.
4. UNLESS NOTED OTHERWISE, ALL BEARINGS AND DISTANCES SHOWN HEREON ARE MEASURED (M).
5. THE PURPOSE OF THIS SURVEY IS TO PREPARE AND DISSEMINATE A TOWER PARCEL AND ASSOCIATED EASEMENTS. THIS IS NOT A BOUNDARY SURVEY OF THE PARENT PARCEL.
6. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL PAGES SEAL OF A PROFESSIONAL SURVEYOR AND APPROPRIATE.
7. SYMBOLS SHOWN HEREON ARE NOT TO SCALE.
8. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A SURVEY OF THE PARENT PARCEL AND THE SURVEY WAS NOT PERFORMED AN INDEPENDENT SEARCH OF THE PUBLIC RECORDS FOR EXISTING EASEMENTS, RIGHTS-OF-WAY, ENCUMBRANCES, ENCROACHMENTS OR EASE RESTRICTIONS.
9. THE PARENT PARCEL IS IDENTIFIED BY PARCEL NUMBER 140 MALABAR ROAD, MALABAR, FLORIDA 32954

## FLOOD NOTE

ACCORDING TO MY INTERPRETATION OF COMMUNITY PANEL NUMBER 20026 0971 0 AND 12002 0814 0 OF THE FLOOD INSURANCE PROGRAM (NFIP) FLOOD INSURANCE RATE MAP (FIRM) FOR THE CITY OF MALABAR, BREVARD COUNTY, FLORIDA, THE AREAS DETERMINED TO BE OUTSIDE THE 1% ANNUAL CHANCE FLOODPLAIN.

## SURVEYOR'S NOTE

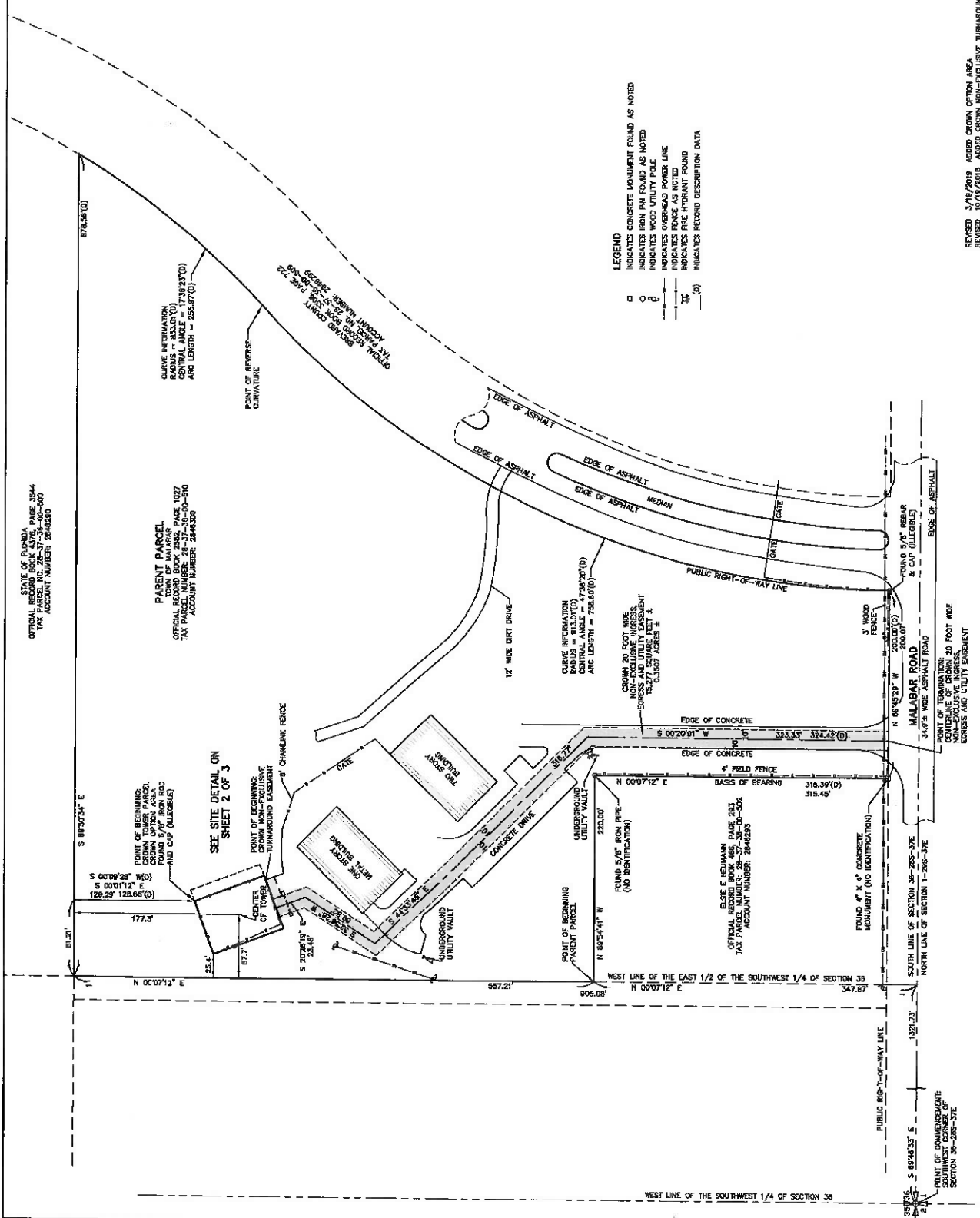
ALL OF THE WORK ABOVE-CROWN TOWER SITE RELATED IMPROVEMENTS ARE WITHIN THE CROWN TOWER PARCEL EXCEPT FOR THE UNDERGROUND UTILITY VAULT ON THE WESTERN SIDE OF THE CROWN TOWER PARCEL.

CERTIFIED TO:  
CROWN CASTLE  
140 MALABAR ROAD, MALABAR, FLORIDA 32954  
CELESTINE SURVEYING, INC. IS 7062

DAVID G. SHARRT  
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER  
CERTIFICATE OF REGISTRATION NO. 5122

**GOE LINE SURVEYING, INC.**  
Professional Land Surveyors  
1400 S. US HWY 1, SUITE 100  
AUSTIN, TEXAS 78748  
(512) 441-0000 Fax: (512) 441-0001  
gls@goeline.com

**CROWN CASTLE SITE BIN # 8056980**  
SHEET 1 OF 3  
DATE: 3/15/2016  
DRAWN BY: DAVID SHARRT  
CHECKED BY: DAVID SHARRT  
PROJECT: CROWN CASTLE SITE BIN # 8056980  
ADDRESS: 140 MALABAR ROAD, MALABAR, FLORIDA 32954  
PHONE: 561-266-1000



- ### LEGEND
- INDICATES CONCRETE MONUMENT FOUND AS NOTED
  - INDICATES IRON PIN FOUND AS NOTED
  - INDICATES WOOD UTILITY POLE
  - INDICATES OVERHEAD POWER LINE
  - INDICATES FIRE HYDRANT FOUND
  - (D) INDICATES RECORD DESCRIPTION DATA

REVISION 3/15/2016 ADDED CROWN OPTION AREA  
REVISION 10/15/2016 ADDED CROWN NON-EXCLUSIVE TURNAROUND EASEMENT

STATE OF FLORIDA  
OFFICIAL RECORD BOOK 4376, PAGE 3544  
TAX PARCEL NO. 28-37-38-00-300  
ACCOUNT NUMBER: 2846280

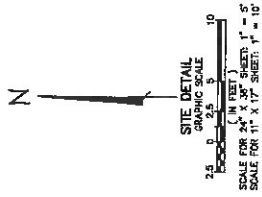
PARENT PARCEL  
TOWN OF MALABAR  
OFFICIAL RECORD BOOK 2582, PAGE 1027  
TAX PARCEL NUMBER: 28-38-00-510  
ACCOUNT NUMBER: 2846300

BASE E. MEYHANN  
OFFICIAL RECORD BOOK 465, PAGE 283  
TAX PARCEL NUMBER: 28-38-00-302  
ACCOUNT NUMBER: 2846302

POINT OF COMMENCEMENT  
NON-EXCLUSIVE TURNAROUND EASEMENT  
SECTION 36-258-37E

# BOUNDARY SURVEY

N 1/4 SECTION 30, TOWNSHIP 28 SOUTH, RANGE 37 EAST  
BREVARD COUNTY, FLORIDA  
FOR: CROWN CASTLE

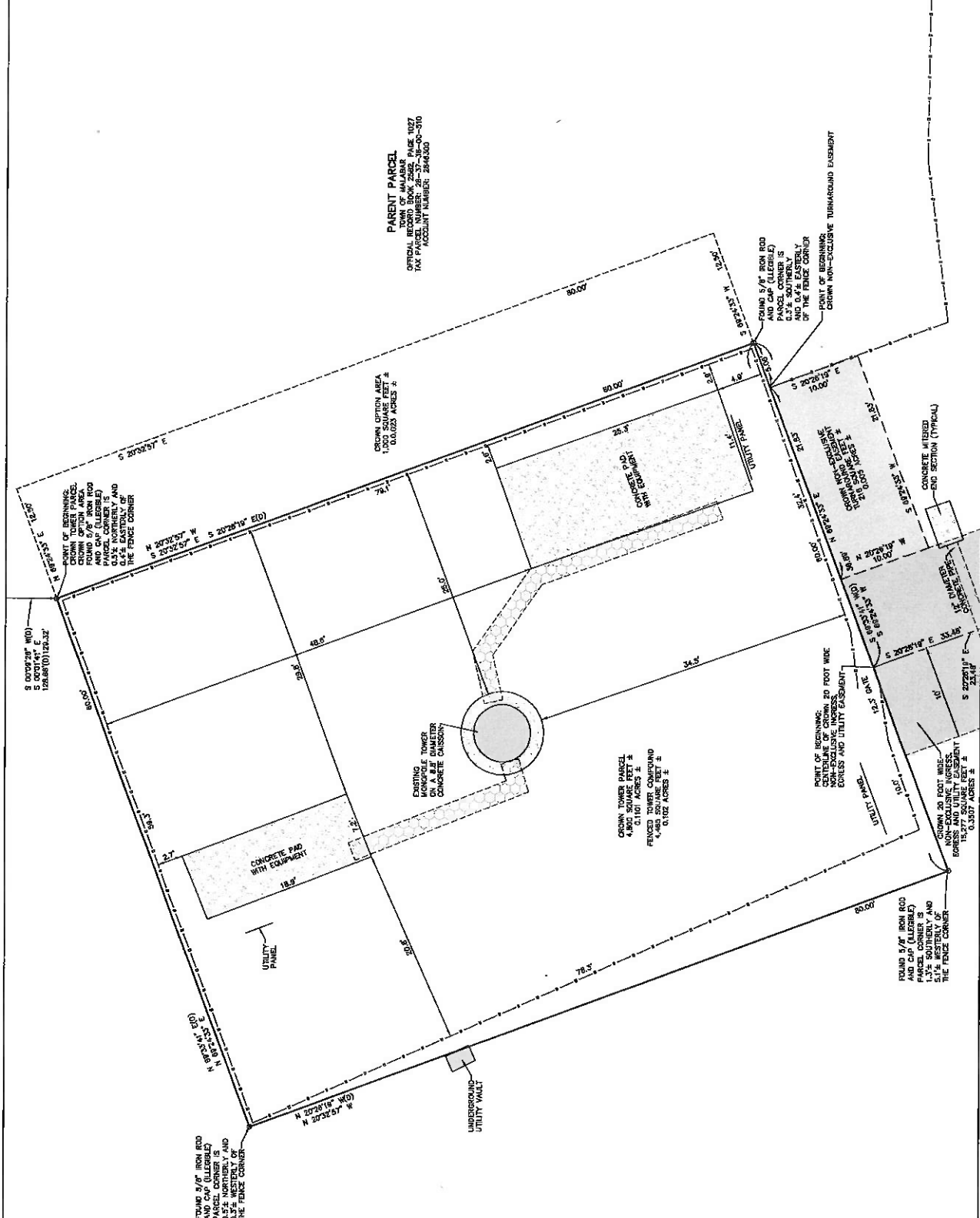


- LEGEND**
- INDICATES CONCRETE MONUMENT FOUND AS NOTED
  - INDICATES IRON PIN FOUND AS NOTED
  - INDICATES WOOD UTILITY POLE
  - INDICATES OVERHEAD POWER LINE
  - INDICATES CONCRETE MONUMENT
  - INDICATES RECORD DESCRIPTION DATA
  - INDICATES CONCRETE
  - INDICATES WAVEGADE BRIDGE

OWNER'S NOTE:  
THE TOWER AND ALL OF THE VISIBLE ABOVE-GROUND TOWER  
RELATED IMPROVEMENTS ARE WITHIN THE CROWN TOWER  
SITE AND ARE NOT TO BE CONSIDERED AS AFFECTING OR  
THE WESTERN SIDE OF THE CROWN TOWER PARCEL.

**GEOLINE SURVEYING, INC.**  
Professional Land Surveyors  
1000 N. US Highway 1, Suite 4  
Altamonte, Florida 32711  
3514-0100 FAX: 3514-0101  
geoline@geolineinc.com

PROJECT: CROWN CASTLE  
DATE SURVEYED: 10/20/2010  
CROWN CASTLE SITE RUN #806398  
1000 S. US HIGHWAY 1, SUITE 4  
ALTAMONTE, FLORIDA 32711  
3514-0100 FAX: 3514-0101



**PARENT PARCEL**  
TOWN OF ALTAMONTE  
OFFICIAL RECORD BOOK 2582, PAGE 1027  
TAX PARCEL NUMBER 2582-00-310  
ACCOUNT NUMBER 2582000

POINT OF BEGINNING:  
CROWN TOWER PARCEL  
FOUND 5/8\"/>

FOUND 5/8\"/>

POINT OF BEGINNING:  
CROWN NON-EXCLUSIVE TURNOVER EASEMENT

CONCRETE W/SEED  
END SECTION (TYPICAL)

CROWN TOWER PARCEL  
4,800 SQUARE FEET ±  
CROWN TOWER SURROUND  
4,482 SQUARE FEET ±  
0.102 ACRES ±

CONCRETE PAD  
WITH EQUIPMENT

CASTING  
MONOPILE TOWER  
ON A 1/2\"/>

POINT OF BEGINNING:  
NON-EXCLUSIVE TURNOVER  
EASEMENT AND UTILITY EASEMENT

CROWN 20 FOOT WIDE  
EASEMENT AND UTILITY EASEMENT  
15,277 SQUARE FEET ±  
0.357 ACRES ±

FOUND 5/8\"/>

FOUND 5/8\"/>