

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY, APRIL 01, 2019
7:30 PM
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

- A. **CALL TO ORDER, PRAYER AND PLEDGE**
- B. **ROLL CALL**
- C. **APPROVAL OF AGENDA - ADDITIONS/DELETIONS/CHANGES:**
- D. **CONSENT AGENDA:**
1. **Approve Regular Town Council Mtg Minutes of 3/18/2019 & Workshop Mtg 3/14/2019**
Exhibit: Agenda Report No. 1
Recommendation: Approve Minutes
- E. **ATTORNEY REPORT:**
- F. **BCSO REPORT:**
- G. **BOARD / COMMITTEE REPORTS:**
T&G Committee; Park & Recreation Board; P&Z Board
- H. **STAFF REPORTS:**
Administrator; PW Director; Fire Chief; Clerk
- 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.**
- J. **PUBLIC HEARINGS: 0**
- K. **UNFINISHED BUSINESS/GENERAL ORDERS MAY INCLUDE ITEMS DIRECTLY RELATED TO RESIDENTS PRESENT AT MEETING (RECOMMENDATIONS FROM BOARDS, HOA REQUESTS, RESIDENT GRIEVANCES)**
- L. **ACTION ITEMS:**
- ORDINANCES for FIRST READING: 0**
- RESOLUTIONS: 1**
2. **Appoint Tom Taylor to the Park and Recreation Board (Reso 05-2019)**
A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF TOM TAYLOR TO THE MALABAR PARKS AND RECREATION BOARD AS A REGULAR 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 05-2019
- MISCELLANEOUS: 1**
3. **Determination of "Accepted" Portion of Linrose Lane for Permitting**
Exhibit: Agenda Report No. 3
Recommendation: Action – direction to staff

COUNCIL CHAIR MAY EXCUSE ATTORNEY AT THIS TIME

- M. DISCUSSION/POSSIBLE ACTION: 2**
 - 4. Discussion on the Signage Regulations in the Land Development Code**
 - 5. FLUM – R/LC Designation on Malabar Road; 660' depth vs. 1320' depth**
- N. PUBLIC COMMENTS: General Items (Speaker Card Required)**
- O. REPORTS – MAYOR AND COUNCIL MEMBERS**
- P. ANNOUNCEMENTS:**
 - (2) Vacancies on the Board of Adjustment; (2) Vacancies on the Park and Recreation Board
 - (1) Vacancies on the Trails and Greenways Committee
- Q. ADJOURNMENT: -**

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to ensure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105).

The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 1
Meeting Date: April 1, 2019

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

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

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

- Town Council WS Meeting – 3/14/2019
- Town Council Regular Meeting – 3/18/2019

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

ATTACHMENTS:

Draft Minutes of 3/14/19, 3/18/19

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

**MALABAR JOINT WORKSHOP WITH PLANNING AND ZONING BOARD MEETING
MINUTES
MARCH 14, 2019
2:00 PM**

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

A. CALL TO ORDER:

Council Chair, Mayor Patrick Reilly called the meeting to order at 2:08pm and led the P&P.

B. ROLLCALL OF THOSE IN ATTENDANCE:

COUNCIL

CHAIR:

VICE CHAIR:

COUNCIL MEMBERS:

MAYOR PATRICK T. REILLY

STEVE RIVET

GRANT BALL

BRIAN VAIL

DICK KORN

DANNY WHITE

PLANNING & ZONING BOARD

CHAIR:

PZ MEMBERS:

WAYNE ABARE

DOUG DIAL

MARY HOFMEISTER

TOWN PLANNER:

TOWN ADMINISTRATOR:

P&Z BOARD SECRETARY:

TOWN CLERK/TREASURER:

TOD MOWERY

MATT STINNETT

DENINE SHEREAR

DEBBY FRANKLIN

C. WORKSHOP TOPIC: Overlay Discussion

Mayor opened the meeting and turned it over to Town Planner, Tod Mowery. Tod referenced the handouts he had on the front table and handed out before the meeting. He also had it on the overhead to go through for everyone present. He then described "traditional" zoning. Adding "overlay" zoning option gives the Town flexibility to work with developers or applicants in order to gain special provisions that provide a "win-win" for the applicant and the Town. It has been in existence for decades.

Tod then explained how Malabar's existing P.U.D. (Planned Unit Development) zoning worked. It allows modifications to the size and dimension regulations and has their own set of requirements and regulations spelled out in that zoning code definition.

Tod gave an example where overlay zoning may be utilized; at the entrances to the Town, along the major corridors or within a certain specified area. The overlay district allows flexibility to the underlying zoning and applies only to that district. The Town would use this for a variety of reasons: to protect the rural character, promote eco-tourism, promote job generation and economic development. The applicant benefits from whatever the flexibility to the underlying zoning permits.

CM Dick Korn stated the overlay process would corrupt the zoning plan. Tod explained it is an additional tool for Council to use in the zoning code that would give the Town something they wanted for the area by providing flexibility to the underlying zoning regulations.

Tod then went through the Potential Uses listed in the handout on why adopting an overlay zoning ordinance may provide for or deal with issues not covered in the underlying zoning classifications.

Identifying and creating an overlay zoning district to encourage a walkable community, by requiring pathways that connect (think Sand Hill Trail); encourage economic development (think tax base); preserve/enhance rural character (think sense of place, sense of pride); etc. (handouts available at Town Hall). The goal is to ensure that the proposed use is consistent with the long-term goals and strategies of the Town's Comprehensive Plan.

Tod explained he has already been brought on as the Town's Planning Consultant, so he has been reviewing the Land Use Regulations in Malabar Code and suggests Council could increase their flexibility by adding additional zoning overlays but be specific to areas, based on the purposes the Town Council determines are important to those areas.

Tod said in his review for the recent land use and zoning change request, he has reviewed our Comp Plan land uses and Code Book Zoning classifications and has identified areas that can be updated to benefit the community. During this process it is critical to get buy-in from the residents, the Planning and Zoning Board and Council. Staff is proposing this additional "tool" to use while discussing zoning regulations. This would be done with an ordinance defining the overlay district, stating the Town's purpose for that site and identifying the specific rules for that area. This is not a new concept.

PZ Chair Wayne Abare asked why add this change – they just spent years going through the Comprehensive Plan. Tod explained that this is a zoning designation, controlled entirely by the Town Council, not the State.

PZ Member Mary Hofmeister asked what started this discussion – was it the Yellow Dog? Tod said that the Borton's had made presentations to P&Z Board and Council on a proposed inn south of their restaurant, but this is not the precipitating cause. He was brought on to assist in the State's response to the Comprehensive Plan amendment and his first assignment was the land use and zoning change presented by Peay's Electric. As he stated earlier, overlay zoning is used extensively to benefit both the Town and the applicants and has been around for decades. The process for approval is the same as any other ordinance dealing with land use: public hearings at Planning and Zoning and Town Council.

Tod said in considering overlay zoning, you would want to identify a specific area; it could be a certain area of the Town or just a specific lot; it is defined by Council. As an example, he referenced Mary's questions proposed a "North River Overlay" designation that would include the area at the northern boundary of Malabar on Highway 1, east and west sides and encompass "x" feet on each side. The ordinance would state the purpose for creating the overlay district such as to increase tourism in this area, promote Malabar, protect the historic character and provide economic development.

The overlay zoning designation would be specific to the area. It would not change the underlying zoning but provide allowances and/or restrictions not otherwise stated in the underlying zoning regulations.

CM Vail asked about the redevelopment districts. Tod explained how CRA's (community redevelopment area) work. They are separate taxing districts and once created have a base taxable value that ad-valorem would continue to go to the Town, but as redevelopment occurs and value increases, those tax dollars would go to the CRA district fund. They have separate governance and oversight by the State.

Council Chair recognized Clerk Franklin – the State mandates a Comprehensive Plan and requires an update every seven years; Malabar adopted its first and then went 18 years and

just recently submitted for its second update. The future land use map and land use regulations need to be continually looked at and kept current.

Mayor asked what other cities around us have this overlay zoning. Most of them do and have had it for years. Tod suggested the interested persons search the www.municode.com and then click on library and then the state and then the city and then check out other city's codes related to this use if interested in pursuing this designation. He did demonstration on the overhead looking up West Melbourne's Land Development Code and read through their zoning designations and their overlay districts. Tod also showed them West Melbourne's requirement for their Interchange Commercial Overlay District and how you customize it to the area. What do you want to promote and prohibit? The Town controls those elements.

Overlay Districts does not change the zoning; it provides flexibility within the existing zoning for the specific area covered by the overlay district.

PZ Chair Wayne Abare asked who initiates it. Tod said it could be the Town or the developer that initiates it, but it is the Town that pays for the process. Referencing the example of Yellow Dog and a North River Overlay that could allow small inns, festive retail and tourism related projects; the Town would be getting a benefit from this, or any overlay district done, so the Town pays the cost of the ordinance and related expenses. Costs could be recouped proportionally by having increased Site Plan fees for projects within an overlay district. Town could also require a performance bond.

Bob Wilbur, past P&Z Chair, likes the concept and thinks an overlay district for the triangle on Babcock Street (Booth Road to I-95 area) would be perfect to allow light-industrial.

CM Danny White referred to Sebastian's Overlay District and how if you put in a sidewalk within the overlay, the setback would be zero.

Mayor Reilly said it would require a planning visionary to come up with overlay districts. Tod said that is why if they go forward, they should choose a small area. The benefits could include aesthetic improvements, employment opportunities, increased taxable values, etc.

P&Z Mary asked what is the return for the Town? Tod explained the overlay district would provide something the Town is desiring for that area.

CM Steve Rivet said that the area being improved would then have increased taxable value which would provide more tax revenue to the Town.

Tod said this was an informational meeting and the next step would be for the Council and P&Z Board members to research and determine if they would like staff to propose the framework for an overlay district for their consideration.

Mayor thanked everyone for attending and said there would be follow-up on this.

D. ADJOURNMENT:

Without objection, the meeting was adjourned at 3:18 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

Overlay Zoning



Town of Malabar

March 2019

TOOL DESCRIPTION

Overlay zoning is a regulatory tool that creates a special zoning district, placed over an existing base zone(s), which identifies special provisions in addition to those in the underlying base zone. (see Figure 1). The overlay district can share common boundaries with the base zone or cut across base zone boundaries. Regulations or incentives are attached to the overlay district to protect a specific resource or guide development within a special area.

COMMON USES

Natural Resource Protection

Overlay districts can manage development in or near environmentally sensitive areas, such as groundwater recharge areas (e.g. to ensure water quality and quantity), special habitat (e.g. species or feature protection) or floodplains (e.g. prevent flood damage). Common requirements may include building setbacks, density standards, lot sizes, impervious surface reduction and vegetation requirements. Structure requirements could include building floor height minimums and flood-proofing to high water level.

Development Guidance

Overlay zones may also be applied to protect historical areas or encourage or discourage specific types of development. Land within the historic overlay district may be subject to requirements that protect the historical nature of the area (e.g. materials, façade design, or color). A community might use incentives along a transit corridor to encourage higher development densities, target uses or control appearance.

Potential Uses

- ◆ Create a walkable community, connect pathways
- ◆ Preserve/enhance a special district
- ◆ Encourage economic development
- ◆ Preserve/enhance rural character
- ◆ Protect quality of surface water
- ◆ Protect groundwater quality and quantity
- ◆ Manage stormwater
- ◆ Preserve forestry integrity
- ◆ Preserve sensitive area/wildlife habitat
- ◆ Protect aesthetics of the natural environment
- ◆ Preserve farm/ranch/wetlands

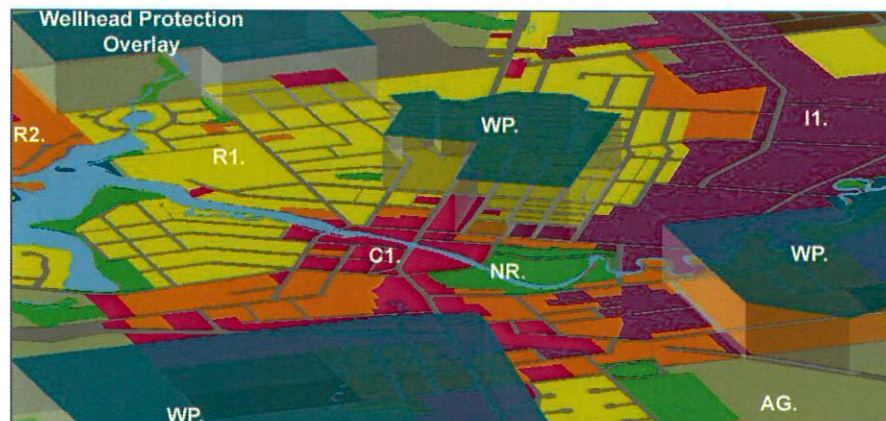


Figure 1. A wellhead protection overlay has special provisions in addition to the requirements of the base municipal zones in order to protect nearby wells from contaminants

IMPLEMENTATION

CREATION

Any governmental unit with the power to create zoning districts can create an overlay district. There are three basic steps to creating an overlay district:

- 1. Define the purpose of the district.** The district should have a clearly defined purpose e.g. to protect drinking water, preserve historical character, minimize erosion from storm water runoff, etc.
- 2. Identify the areas that make up the district.** Mapping district boundaries will depend on the natural or cultural resources and the geographic areas that relate to achieving the purpose of the district. For example, if the purpose of the zone is to protect groundwater, important groundwater recharge areas and areas prone to pollution, such as fractured bedrock or areas with a high groundwater table should be mapped..
- 3. Develop specific rules that apply to the identified district.** In a groundwater recharge district for example, provisions may restrict development or require development guidelines that capture and filter water runoff..

“When reviewing a project of any size in the overlay zone, it is important that the development be consistent not only with the goals and objectives of the overlay but with the long-term goals and strategies of the overall town's comprehensive plan.”

It is critical that the zoning provisions offer clear guidance to both property owners and the governing body charged with approving proposals. Zoning requirements must be applied equally over all properties within the district. The ordinance not only must comply with any state and federal regulations, but must also be consistent with the goals, objectives, and policies of the town's comprehensive plan.

It is important that the local governing body involve the public to clarify issues and explain the reasons behind mapping district boundaries. An educational program targeting developers and affected property owners will help increase awareness and compliance with the new requirements.

The procedures for adopting an overlay district are the same as for adopting a zoning or rezoning provision. The overlay provisions as well as changes to the zoning map must be approved by the local governing body for adoption.

ADMINISTRATION

Consideration of the overlay district standards can be incorporated into the existing subdivision or site plan review process. Because smaller-scale development will often require only a building permit, it may be necessary to include provisions for a streamlined form of site plan review for these projects. This review could be administered by the town planner or city council, town manager or building inspector. Long-term compliance can be addressed in the zoning ordinance.

Report Card: Overlay Zoning

Cost	Money or staff resources required to implement tool.
A	Assuming a zoning ordinance currently exists, the cost to create the district should be similar to the potential cost to modify the existing ordinance. Little if any additional staff would be required to administer the new zoning provisions.
Public Acceptance	The public's positive or negative perception of the tool.
B	Zoning provisions for the overlay zone in addition to base zoning rules may be confusing to the public without some education.
Political Acceptance	Politician's willingness to implement tool.
B	Political willingness will depend upon the provisions within the ordinance.
Equity	Fairness to stakeholders regarding who incurs costs and consequences.
B	The tool can be perceived as fair if all properties within the zone are treated equally and the criteria for delineating the zone are straightforward and justified.
Administration	Level of complexity to manage, maintain, enforce, and monitor the tool.
B	An overlay district can be integrated into the administration of the existing zoning ordinance. An additional process may need to be established for small projects needing only a building permit. Reviewer training will be needed. A well-written ordinance and clear boundaries will simplify compliance.
Scale	The geographic scale at which tool is best implemented.
Municipal to Regional	The tool is most often implemented at a municipal or county scale.

GRADING EXPLANATION

A - Excellent

B - Above Average

C - Average

D - Below Average

F - Failing



Figure 2. City of Melbourne overlay zoning example

EXAMPLE:

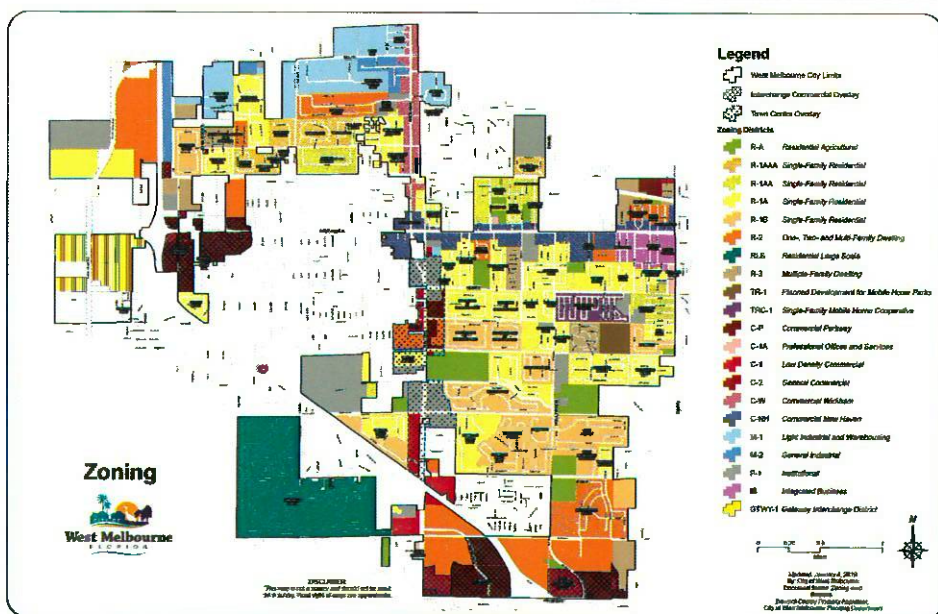
City of West Melbourne - Overlay District

- *DIVISION 4. - INTERCHANGE COMMERCIAL OVERLAY DISTRICT*
- *DIVISION 5. - MIXED USE OVERLAY DISTRICTS*
- *DIVISION 6. - TOWN CENTER OVERLAY DISTRICT*

Overlay districts are zoning district that are not independent zoning districts, but are regulations to be applied over and above the zoning regulations otherwise controlling an area of land. The district upon which an overlay has been superimposed is referred to herein as the "underlying district". Overlay districts may be defined by some physical characteristic or may be delineated in the same manner as a conventional district upon the subject property.

Basic items often covered:

- *Purpose*
- *Area*
- *Underlying Zoning*
- *Permitted Uses*
- *Prohibited Uses*
- *Design Requirements*
- *Signs*
- *Landscaping*
- *Parking*



MALABAR TOWN COUNCIL REGULAR MEETING MINUTES

MARCH 18, 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 Brian Vail led P&P.

B. ROLL CALL:

CHAIR: MAYOR PATRICK T. REILLY

VICE CHAIR: STEVE RIVET

COUNCIL MEMBERS: GRANT BALL

BRIAN VAIL

DICK KORN

DANNY WHITE

MATT STINNETT

KARL BOHNE

DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

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

D. CONSENT AGENDA:

1. Approval of Minutes

Regular Town Council Meeting Minutes 3/04/19

MOTION: CM Vail / CM Ball to approve the 3/4/19 regular meeting minutes as submitted.

Discussion: none. **Vote:** 5 Ayes

E. ATTORNEY REPORT: Nothing

F. BCSO: They responded to 199 calls in January – 0 burglaries, 4 thefts and 23 traffic stops. CM Korn asked if they also patrol Brook Hollow area. Yes, on a regular basis.

H. STAFF REPORTS:

ADMINISTRATOR: TA has nothing

CLERK: Said she will be out from April 2 – 5, 2019, but will be available via email and phone.

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: 0

K. UNFINISHED BUSINESS/GENERAL ORDERS

L. 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

Resolution read by title only. Discussion:

MOTION: CM Korn / CM Rivet to adopt Reso 04-2019. Discussion: CM Korn felt this is a good appointment.

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

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

Eric Bienvenu, Chair from Park and Recreation went over the concept and the finished layout and the location by the flag poles. It was planned so it could be expanded by adding panels. CM Ball asked if the bill dealing with local governments not having ability to deal with monument preservation influence this? Yes, it could. CM White said consideration should also be given to persons that may have been found guilty of molesting children – how do you remove the name? CM Korn said they need to discuss the way to choose those persons who have contributed to the Town and should be memorialized. Mayor said that can be a later discussion – criteria used to nominate a name; perhaps started at Park Board and suggestions brought to Council.

MOTION: CM Rivet / CM Vail to approve memorial wall concept and proceed to bid.**VOTE:** All Ayes.**4. Approve Cell Tower Easement, 1830 Malabar Road****Exhibit:** Agenda Report No. 4**Recommendation:** Approve Easement Agreement

Chair turned it over to Attorney. Attorney gave history of existing lease and how the payments are set up; amount per month for the tower, plus an additional amount each new platform tenant – he found the former Crowne attorney and asked. Crowne Castle feels more comfortable with an absolute property right with this easement, than with a lease hold right through the existing lease. The use of cell tower is not the way towers are going. CM Rivet said the 5G technology that they are moving to will bring more of the small, ground based equipment because there will be more of them and they don't require the height. If we are counting on the money; this is a better financial deal for the Town. Not a bad deal for the Town. Attorney said what is the future need of this property for the Town. Is the property useable to the Town in another way?

CM Korn mentioned the potential rent. What is the benefit monetarily? 589K with a 10K down payment and a complete pay out over 20 years for a 30-year lease.

TA said in terms of what they plan to use the additional land. They are intending to make it more marketable to the carriers. With the new 5G the need for ground space is needed more than tower space. Gave an example of Verizon – they wanted the extra space for their technician. CM Rivet said the tech trends going forward – the higher the frequencies – the trend is only going to go up. If we can lock in this price at current values that would be to the Town's benefit. The State and Federal govt are trying to encourage expansion of the cellular equipment. CM Ball said we

Attorney said what is the future for this site? CM Vail said they are asking for 30 years for a reason, so they can invest in it. TA said the initial request was for 99 years. Atty said they will have to pay out even if they cut the lease short.

MOTION: CM Ball / CM Vail to approve sale of the easement.**VOTE:** All Ayes.

Chair excused the Attorney at this time.

M. DISCUSSION/POSSIBLE ACTION:**N. PUBLIC COMMENTS: General Items (Speaker Card Required) none****O. REPORTS – MAYOR AND COUNCIL MEMBERS**

CM Ball: Nothing

CM Vail: Nothing

CM Rivet: He has received contacts from residents with issues with the new website. He understands that when we go to a new system there is an overlap. Asked TA for update.

TA said we used a company to port over the material from the old website to the new and some of it didn't transfer as we intended. Also, as we learn to use the new site, improvements are being made. Also, the minutes are being done on a new software program that integrates with the new website and we are still working on that.

CM Korn: Complemented CM White to put this together. A TA does not have authority to make agreements. That is the district he is in. There is a lot of misinformation. Complements to PW. The ditches on Weber are marvelous. Tom is an artist. He is delighted with all the work. CM Vail thought they are doing a great job on the mowing also. CM White said they are really doing a great job. CM Korn said he went down Weber to Valkaria and then up Corey Road and Weber ditches look better than Corey.

CM White: At the SCLC dinner meeting the Board approved a resolution opposing this bill about monuments. Under the current writing it could affect our memorial wall. On Wednesday, he will be doing a ride along with Jim on the Space Coast transit to try and get a stop on Malabar Road, perhaps at Town Hall and at Marie Street. Riders could mount their bikes to the front of the bus and come here to ride trails. CM Ball said in the 1960's, Greyhound bus could be waved down and would stop and pick you up and take you to Melbourne. CM White said you can call SCAT and request a pick up. CM Korn thought there used to be a bus stop at town hall. From the audience, the Mayor recognized Jim Roulston who said there are special needs people that this would help.

CM White looked into documentation on the SW project on Hall Road. He put a package together and gave each CM a copy. In 2017, a letter went out telling residents about a SW project. He could not find any documentation that there was any communication with these residents before commencement of project. If there had been, maybe this project would have been changed or eliminated. After the ditch was done, one of the residents complained about the big ditch and loss of water from his pond. The owners of 400 Hall and 460 Hall Road were given letters and that is pages 3-6 of handout asking if they would be interested in paying for their portion. 400 Hall responded and said he did not want to pay. The people at 460 Hall did not respond at all. CM White found no written agreement with anyone. The cost on the project pipe was for 24" pipe and it was 13K plus the cost of the catch basins. He heard a resident say it was to be paid at completion. At last meeting there was question of ethics and complying with earlier commitments made by Town representatives. He has found no such written commitments.

Mayor: Thanked Council and staff for attending the SCLC dinner meeting. On Wednesday he will meeting with Hal Rose in W. Melbourne to discuss their use of the overlay districts.

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 8:20 PM.

BY: _____
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby Franklin, C.M.C.

Date Approved: 4/1/2019

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: April 1, 2019

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

SUBJECT: Appointment of Tom Taylor to Park and Recreation Bd (Resolution 05-2019)

BACKGROUND/HISTORY:

Board and Committee terms are for three years. There are two openings on the Parks and Recreation Board. Mr. Tom Taylor would be a returning member.

ATTACHMENTS:

Reso 05-2019 Tom Taylor to Park & Rec Board
Application package from Mr. Taylor

ACTION OPTIONS:

Adopt Resolution 05-2019.

RESOLUTION 05-2019

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF TOM TAYLOR TO THE MALABAR PARKS AND RECREATION BOARD AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Malabar Town Council has been notified of an expiring term on the Parks and Recreation Board; and

WHEREAS, Malabar Town Council desires to fill this opening by reappointment.

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

Section 1. The Town Council of Malabar, Brevard County, Florida, hereby approves the appointment of Tom Taylor as a regular member of the Park and Recreation Board for a three year term.

Section 2. The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the Town Clerk to notify the member, the Board Chair and the Board Secretary of this appointment.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 4. This resolution shall take effect immediately upon adoption.

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

Council Member Grant Ball	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member Dick Korn	_____
Council Member Danny White	_____

This Resolution was then declared to be duly passed and adopted this 1st day of April, 2019.

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

ATTEST:

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

(seal)

Approved as to form and content:

Karl W. Bohne, Jr.
Town Attorney

FEB 20 2019

RECEIVED

Town of Malabar Volunteer Committee/Board Application

Park & Recreation Advisory Board Application

The Park & Recreation Board is hereby established and shall consist of five (5) seats and two (2) alternate-seats. The Board is advisory in nature. Members of the Board shall hold no other Town office. The affirmative vote of a majority of the regular and alternate board members present and voting (maximum of five votes) shall be necessary for the adoption of any motion. The Board discusses matters relating to the acquisition, development, maintenance, rehabilitation and operations of parks and recreation properties and facilities within the Town of Malabar and forward their recommendations to the Town Council for their consideration.

Name: Tom Taylor Phone: 321-676-4748
Home Address: 2755 WARREN LANE, MALABAR, FL 32917
Email Address: M1MITAYLOR06@aol.com

Are you a resident of the Town: Yes No

How long have you been a resident of the Town of Malabar: 16 years

Are you currently involved with any other organization of the Town: Yes No

If yes, which organization: _____

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: Tom Taylor TELEPHONE: 321-676-4748
ADDRESS: 2755 Waring Lane
EMAIL: tataylor@cflrr.com

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

OCCUPATION: (If retired, please indicate former occupation or profession.)

CEO of Fire Pooling Co.

PROFESSIONAL AND/OR COMMUNITY ACTIVITIES:

Park Board member for 3 years
Springfest Volunteer

ADDITIONAL INFORMATION/REFERENCES:

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

Board of Adjustment Planning & Zoning
[X] Parks & Recreation Trails & Greenways

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

Signature of Applicant

3/20/19
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.

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Town of MalabarVolunteer Committee/Board ApplicationApplicant 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:
 - Malabar Code of Conduct
 - Code of Ethics for Public Officials (F.S., Chapter 112, Part III)
 - 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


Signature02-20-19
Date

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**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, and Town utility customers. 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

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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.

[Handwritten Signature]
Signature

2/20/19
Date

[Handwritten Name]
Print Name

[Handwritten Name]
Witness

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: April 01, 2019

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

SUBJECT: Determination of "Accepted" Portion of Linrose Lane for Permitting

BACKGROUND/HISTORY:

This issue deals with the portion of Linrose Lane running north from Hall Road.

- On the west side of Linrose Ln, at the north end of the travel way, a house was built in the early 1980's on Parcel 22 with no reference in the file to the road being *improved*.
- Later, by Court Order, Parcel 45 on the east side of Linrose Lane was developed. A permit was denied because there was only 25-ft of dedicated right-of-way and it all came from the parcels on the west side of Linrose. Based on the road improvement ordinance at the time (circa 1984), the property owner was required to dedicate frontage for right-of-way (ROW). The property owner filed a lawsuit and prevailed in court and could build without dedicating ROW or improving the road. The Town "accepted" 528 feet of Linrose north from the centerline of Hall (furthest point of Parcel 45) based on Order.
- Currently Parcel 45 and the Parcel to its north (Parcel 44) have been joined adding another 300 feet of frontage.
- Parcels 86 and 46 to the north of that point have potential to develop using the same private easement dedicated back in 1977 to these parcels.
- Parcel 33 was developed after this time.
- Parcels 21 and 39 are vacant and available to develop.
- Parcel 21 is now for sale and the potential buyer is asking if the Town will require road improvement.

There is a dedicated Private Ingress/Egress Easement granted to on the east side of Linrose from Hall Road north for 264 feet, but it does not appear to be developed for access.

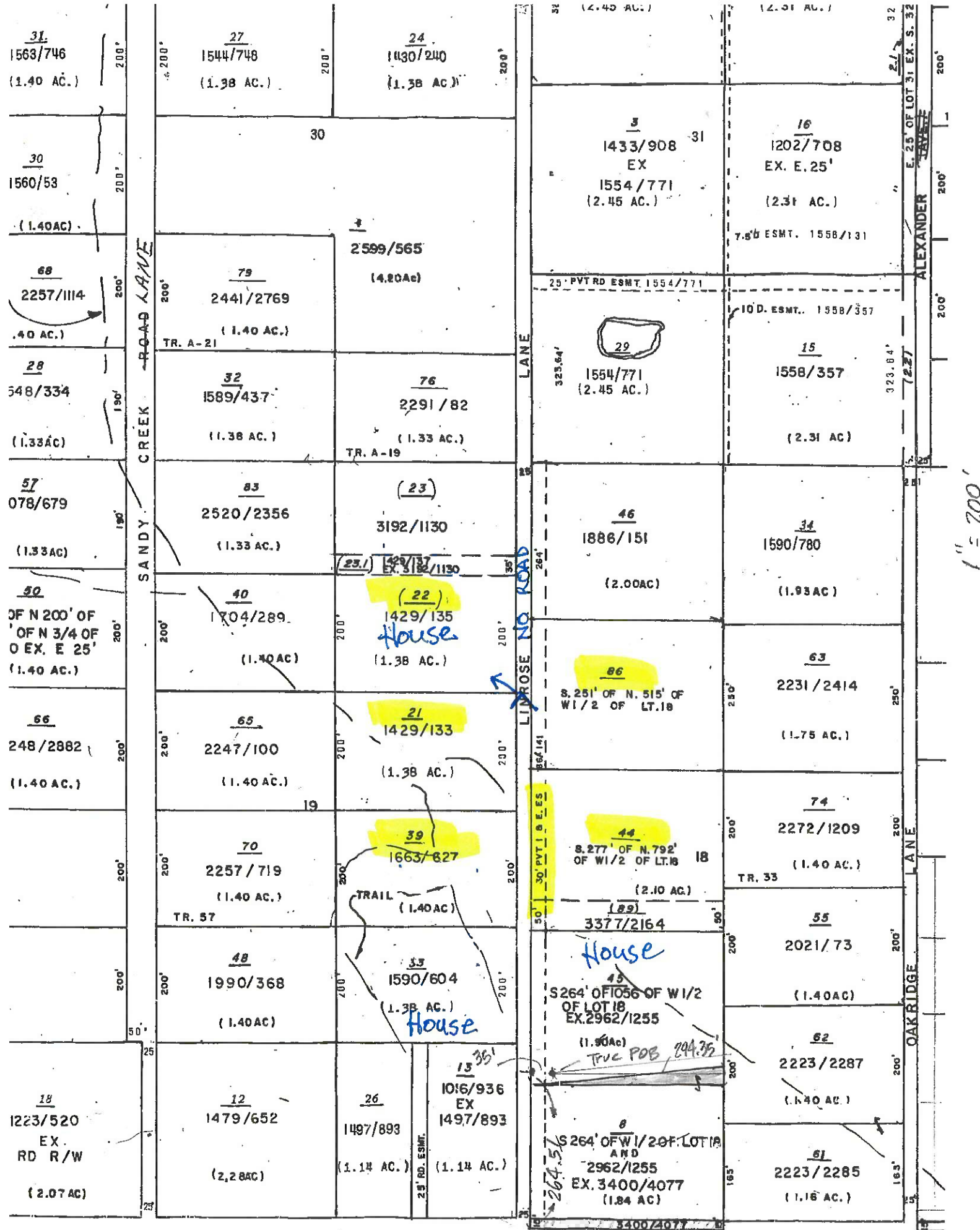
There is a parcel for sale and the potential buyer wants to know if they would be responsible to improve the road to the current town standards. This parcel is south of the grandfathered parcel and adjacent to the parcel that the Town was sued over but north of the accepted distance.

ATTACHMENTS:

Historical Documents
Memo from Karl Bohne

ACTION OPTIONS:

Action on accepted distance of Linrose Lane, north of Hall Road.



1" = 200'

S.W. 112

Memorandum

**To: Malabar Town Council
Matt Stinnett, Town Administrator, and
Debby Franklin, Town Clerk/Treasurer**

Date: March 26, 2019

From: Karl W. Bohne, Jr., town Attorney

Re: Linrose Lane

The Town Clerk has asked for a legal opinion concerning road improvements on Linrose Lane. Linrose is a 25-foot platted right of way and depending upon the version of the code the Town does require either a 50 foot or 60 foot right of way. A parcel is now being marketed for sale and the question is: What are the road construction requirements for Linrose?

A. Historical Facts.

On the west side of Linrose Lane, parcel 22, a house was built in the early 80's, but the Town records do not indicate any portion of Linrose was improved to the then Town standards.

Parcel 33 appears to have been developed without road improvements as required by code.

In the 1990's the Town was sued by the owner of parcel 45 (parcel 44 and 45 are now combined) on the east side of Linrose Lane.

1. The Hoene Lawsuit

The basis of the lawsuit was a challenge to the Town's requirement of dedicating sufficient right of way to eventually meet the then Town goal of attaining 50 foot right of ways.

The dedication was a pre-condition to obtaining a building permit and the right of way also needed to be improved to the then town dirt road standards, i.e., 22 feet of stabilized compacted travel lanes, 12 feet of stabilized shoulders and 16 feet of swales. The owner, Mr. and Mrs. Hoene stated to the council they would improve the road on the 25-foot existing right of way. The Council declined and required a 50-foot ROW. The lawsuit and the Final Judgment of the Court found that even though the Hoene permit was denied other permits were improved during the same time period on 25-foot ROWs. The Hoenes did attempt to get a variance to build on a 25-foot ROW, which was denied.

The Court eventually ruled against the Town. A copy of the Final Judgment is attached. The judgment, in my opinion establishes, at least as it relates to Linrose, a precedence on the road construction standards for Linrose.¹

a. Rational Nexus

The Judgment found that the Road Ordinance, especially the dedication portion, did not meet substantive due process requirements. The argument was that the compulsory dedication requirement had no rational nexus to any reason for such compulsory dedication of the Town. It's hard to determine what the town argued as the reason behind the dedication, issues of emergency services ingress and egress should have been argued and would have, in my opinion, provided the rational nexus. But again, without the benefit of a trial transcript, we cannot determine was put forth by the Town to establish this rational nexus.

b. "In-kind Impact Fees"

It was successfully argued that the compulsory dedication was an "in-kind impact fee", meaning that the dedication requirement imposes an unreasonable burden upon new development in that this "fee" (dedication) cannot be attributed to the impacts of the new development. Again, in applying the rational nexus test the Court found that the compulsory dedication created an in-kind impact fee which could not be attributed to the impacts caused by the development of this lot.

c. Equal Protection

The essence of this claim and ruling is that the Town treated Hoene differently than others similarly situated. The Town apparently processed building permits for properties with only a 25-foot ROW without any compulsory dedication.

d. Taking

The Court determined that the compulsory dedication ordinance of the Town and the denial of the building permit of the Town constituted a temporary taking of the Hoene's property. The Court reserved jurisdiction to award damages for the taking, however, I did not find any evidence as to whether that damage award was rendered by the Court.²

The Town lost the lawsuit and was ordered to pay over \$46,000.00 in attorney fees to the other side. The Town did appeal but apparently the appeal was dismissed by the Town. I am also informed that the Linrose ROW which abuts the Hoene parcel was never constructed to any of our road standards, but a building permit was granted.

¹ Paragraphs 13, 14, and 15 of the Judgment focus on procedural deficiencies in the Town's adoption of a moratorium process and are not relevant to the discussion.

² This action was instituted before the provisions of the "Bert J. Harris, Jr., Private Property Rights Protection Act." Were adopted which may have formed the basis of additional relief for Hoene

B. What this all means

As far as I am concerned this Final Judgment establishes a bind precedent as far as Linrose Lane is concerned.³ It would be my opinion that the future development of Linrose must be consistent with the Judgment. So, it doesn't appear that we can require any compulsory dedication, but we appear to be allowed to, at a minimum, require that the existing 25-foot ROW be constructed to some dirt road standard without dedication. See exhibit B-6 of Resolution 48-2010.

³ As to how this affects other properties which abut any ROWs which are under 50 feet more research must be done. Staff's best estimate is that there are about 39 streets that are undersized. Some of those (maybe 11) have not been developed yet but the others have either 25' ROW or something less than 50-foot ROWs. Plus, we have the entire Melbourne Heights Subdivision that has ROWs of various widths, mostly under 50 feet.

CLOSED

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

TOWN OF MALABAR,
Appellant,

v.

DAVID HOENE and JOAN L.
HOENE,
Appellee.

Brew. No. 90-7319-CAC
Case No. 92-186

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BY [unclear]

DATE: April 10, 1992

BY ORDER OF THE COURT:

ORDERED that Appellant's NOTICE OF DISMISSAL, filed April 10, 1992, is approved, and the above-styled cause is dismissed.

I hereby certify that the foregoing is
(a true copy of) the original court order.

FRANK J. HABERSHAW, CLERK

BY: [Signature]
Deputy Clerk

(COURT SEAL)

cc: Richard E. Torpy, Esq.
Clifton McClelland, Esq.

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CLOSED

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
BREVARD COUNTY, FLORIDA

CASE NO. 90-7319-CA-C

DAVID HOENE AND JOAN L. HOENE,

Plaintiffs,

vs.

TOWN OF MALABAR,

Defendants.

FILED IN OFFICE
ROCKLEDGE BRANCH
FEB 14 4 15 PM '92

REAR BY ANNE E. HENDERSON

ORDER ON COSTS AND FEES

THIS CAUSE came on to be heard on the Plaintiffs' Motion to Award Costs and Fees and the Court finding that the Plaintiffs are entitled to an award of attorney's fees as the Court has determined that a violation of the Plaintiffs' rights under the provisions of 42 U.S.C. §1983 occurred and 42 U.S.C. §1988 authorizes an award of attorneys fees on actions to enforce 42 U.S.C. §1983 and the Defendant's actions constitute a taking of property under which County of Volusia v. Pickens 435 So.2d 247 (5th DCA, 1983) authorizes the award of costs and attorneys fees for actions which establish inverse takings. It is, therefore,

ORDERED AND ADJUDGED as follows:

1. That the reasonable hours expended for the legal work in this case at the trial court level prior to the institution of the appeal are 208.25 hours and that an hourly rate of \$175.00 per hour is a reasonable rate for the Plaintiffs' attorneys. The attorney's hours are allocated with 88 hours primarily spent on the 42 U.S.C.

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\$1983 claim and 120.25 hours primarily spent on the inverse taking claim.

2. That the Town of Malabar is hereby ordered to pay Clifton A. McClelland, Jr. a reasonable attorney's fee in the amount of \$36,443.75.

3. That the Town of Malabar is hereby ordered to pay costs as follows:

A.	Expert Witness Fee - Appraisal and Counseling Group of Florida, Inc.	\$ 2,250.00
B.	Expert Witness Fee - Robertson and Associates	\$ 7,550.00
C.	Court Reporter Costs	\$ 829.50
D.	Court Costs	\$ 169.00
	Total Costs:	<u>\$10,798.50</u>

4. That the Town of Malabar is hereby ordered to deliver to Clifton A. McClelland, Jr., Esquire a draft in the amount of \$47,242.25 to Post Office Box 2523, Melbourne, Florida 32902-2523 and Clifton A. McClelland, Jr. shall reimburse such costs and fees to the proper parties in accordance with this Order.

DONE AND ORDERED in Chambers in Rockledge, Florida this 14 day of February, 1992.


CIRCUIT COURT JUDGE

Copies furnished to:

Clifton A. McClelland, Jr., Esquire
Richard E. Torpy, Esquire

CLOSED

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
BREVARD COUNTY, FLORIDA

CASE NO. 90-7319-CA-C

DAVID HOENE AND JOAN L. HOENE,

Plaintiffs,

vs.

TOWN OF MALABAR,

Defendant.

FILED IN OFFICE
ROCKLEDGE BRANCH
Dec 30 4 21 PM '91
R. G. ...
CLERK OF COURT
BREVARD COUNTY, FLORIDA
SHARON HOOKS

FINAL JUDGMENT

THIS CAUSE came on for trial and the Court, after considering all the evidence presented and the argument of counsel, finds as follows:

FINDINGS OF FACT

1. The Plaintiffs own a vacant single-family homesite on a public road known as "Linrose Lane" in the Town of Malabar, Florida. Linrose Lane has a twenty-five (25') foot wide public right-of-way located adjacent to Plaintiffs' property which is open for public access.

2. There are currently two (2) occupied homes on Linrose Lane, both which had building permits issued prior to 1984. Linrose Lane is a public road designated in the traffic circulation system of the Town of Malabar in its Comprehensive Plan. The houses on Linrose Lane as it currently exists generate approximately twenty (20) trips per day.

3. On July 17, 1984, the Town Council adopted Ordinance No. 6-5-84. Section 2-15 of the ordinance states that an applicant for

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a building permit must obtain an improvement permit for the road on which he has ingress and egress to his property. Section 3-2 of the ordinance requires that secondary local streets such as Linrose Lane shall have a right-of-way which is fifty (50') feet wide, and Section 3-4 states that a right-of-way deed shall be required from an applicant dedicating the right-of-way to the Town prior to the issuance of a building permit.

4. In order for Plaintiffs to obtain a building permit for their home site under Ordinance 6-5-84, the Town of Malabar imposed a requirement on the Plaintiffs that they dedicate twenty-five (25') feet of additional right-of-way for Linrose Lane to enlarge Linrose Lane to fifty (50') feet in width from Hall Road on the south to the north property line of Plaintiffs property. The Plaintiffs under the current ordinance must improve Linrose Lane until it has twenty-two (22') feet of stabilized compacted travel lanes, twelve (12') additional feet of stabilized shoulders, and sixteen (16') feet of swales.

5. On March 5, 1985, Plaintiff, David Hoene, appeared before the Town Council and stated that he would improve the road on the twenty-five (25') feet of existing Linrose Lane from Hall Road to his property. The Council indicated it wanted Mr. Hoene to build a fifty (50') foot wide road from Hall Road to the farthest north end of his property, and both Mr. Hoene and his brother-in-law, Archie Campbell, should dedicate twenty-five (25') feet of additional right-of-way to the Town under Ordinance 6-5-84, to obtain a building permit for Mr. Hoene's home site.

6. On April 10, 1989, Plaintiffs filed for a building permit with the Town of Malabar. The Town of Malabar never acted to approve or disapprove the Plaintiffs' building permit, but in fact "lost" the building permit.

7. The Plaintiffs made an application for a building permit a second time on February 19, 1990. Although the application for the building permit was in order, the Town of Malabar denied the building permit for the Plaintiffs on April 2, 1990. The reason the Town said the permit was denied was because the Town of Malabar did not have a fifty (50') foot wide right-of-way for Linrose Lane.

8. While the Town of Malabar denied the Plaintiffs' building permit, it had approved building permits for other citizens on twenty-five (25') foot wide roads, and such permits were approved after the effective date of Ordinance 6-5-84. On January 16, 1990, the Town Council established a moratorium on the issuance of building permits for single-family homes on twenty-five (25') foot rights-of-way. The reason the Town used to justify the imposition of the moratorium was the Town was not following the right-of-way width designated in its 1988 Comprehensive Plan. There was no newspaper notice published on the imposition of the moratorium, nor was the moratorium adopted by resolution or ordinance of the Town Council.

9. The Comprehensive Plan provision which sets out right-of-way requirements for public dirt roads with swales like Linrose Lane is sixty (60') feet. Although the Town of Malabar used the Comprehensive Plan requirements to justify the imposition of the

moratorium, it has not enforced the Comprehensive Plan sixty (60') foot requirement for dirt roads in the Town since the imposition of the moratorium. The Town is requiring either the twenty-five (25') foot right-of-way or a fifty (50') foot right-of-way for issuing building permits.

10. After the adoption of the moratorium the Town approved the issuance of building permits to other individuals on twenty-five (25') foot rights-of-way. There is no difference between the twenty-five (25') foot roads on which the Town has authorized issuance of permits for single-family residences and Linrose Lane adjacent to Mr. and Mrs. Hoene's property.

11. Mr. and Mrs. Hoene have invested over \$7,000.00 in preparing their property for a homesite. The denial by the Town of Malabar of the building permit to Mr. and Mrs. Hoene renders their single-family property worthless as a homesite and without any beneficial use. There is no other use of this property that can be economically executed.

12. The Plaintiffs applied to the Town Board of Adjustment on April 4, 1991, for a variance to build a single family residence on the 25 foot right-of-way of Linrose Lane. The Town denied the variance request. The Plaintiffs have exhausted all of their administrative procedures and remedies under the Town of Malabar's ordinances to obtain a building permit on Plaintiffs' property for a single family residence.

CONCLUSIONS OF LAW

13. Notice of the Moratorium: The moratorium which the Town of Malabar enacted on January 16, 1990, on the issuance of single family building permits on roads twenty-five (25') feet or less in width was established without publication of the public notice required under Section 166.041 of the Florida Statutes.

A municipality such as the Town of Malabar must comply with the same procedure in imposing a moratorium as adopting a rezoning ordinance. Franklin County v. Leisure Properties, Ltd., 430 So.2d 475 (1st DCA 1983). Indeed, there must be strict compliance by municipalities with the procedural requirements for enacting an ordinance when a moratorium is imposed. City of Gainesville v. GNV Investments, Inc., 413 So.2d 770, (1st DCA 1982) and City of Sanibel v. Buntrock, 409 So.2d 1073, (2nd DCA 1981).

14. Moratorium Invalidity: A moratorium on the issuance of building permits is valid only if it fulfills five (5) requirements, as follows:

1. The moratorium must be in good faith;
2. The moratorium must not be discriminatory;
3. The moratorium must be of limited duration;
4. The moratorium must be appropriate for the governmental action which justifies the imposition of the moratorium; and,
5. The town must act promptly to address the problem which caused the imposition of the moratorium.

Almquist v. Town of Marshan, 245 N.W. 2d, 819 (Minn. 1976). The

moratorium which has been imposed by the Town of Malabar is invalid for reasons as follows:

1. The moratorium discriminates between similarly situated individuals. The Plaintiffs have been denied a building permit while other parties have building permits approved on twenty-five (25') foot wide rights-of-way after the adoption of the moratorium;
2. The moratorium is not appropriate for the purpose for which it was imposed (for an enforcement of the Comprehensive Plan), as the Town, in fact, is not enforcing the sixty (60') foot requirement in the Comprehensive Plan, but is enforcing a fifty (50') foot wide right-of-way requirement for dirt roads which is not in the Comprehensive Plan; and,
3. The moratorium is not of limited duration. The Town, one year and nine months after the imposition of the moratorium, continues in its failure to address the problem of the acquisition of the additional rights-of-ways which are necessary for the widening of the twenty-five (25') foot streets such as Linrose Lane. A moratorium can not have an indefinite duration. The Town of Malabar moratorium fails the Almquist test.

15. Improper Publication of the Notice of Adoption of an Ordinance: The source of authority the Town cites to deny the

Plaintiffs their building permit is either Ordinance 6-5-84 or Ordinance 90-3. Both of these ordinances affected the permitted land use (issuance of building permits) of more than five (5%) percent of the total land area in the Town of Malabar. The Town of Malabar failed to publish in a newspaper with general circulation or to provide notice to each individual property owner of the notice which was required when it adopted these ordinances under the provisions of Section 166.041 of the Florida Statutes. Any ordinance which limits or restricts land use is null and void if not strictly enacted in accordance with the public notice requirements of Section 166.041, Davis v. City of Dunedin, 473 So.2d, 304, (2nd DCA 1985). Ordinances 6-5-84 and 90-3 are null and void and can not bar the Plaintiffs from receiving their building permits.

16. Rational Nexus: Substantive due process mandates a rational basis must exist between an ordinance and the objective the ordinance seeks to achieve. The Town of Malabar ordinances state that the Plaintiffs must make a compulsory dedication of right-of-way on an existing public road, and improve the public road to their northern property line to obtain a building permit.

The Florida courts have imposed a rational nexus test on compulsory property dedications for public roads. This test requires that the nexus must be substantial, demonstrably clear and present to compel dedication. The development applying for the building permit either forthwith or in the demonstrably immediate future must so burden the abutting road through increased traffic

or otherwise so as to require its accelerated improvement. Hernando County v. Budget Inns, 555 So.2d 1319, (5th DCA 1990) and Lee County v. New Testament Baptist Church, 507 So.2d 626 (2nd DCA 1987). Adequate access currently exists on the present public road to Plaintiffs' property. There is no need for the dedication and road improvement which the Town seeks. The requirement to improve Linrose Lane from Plaintiffs' driveway north to the farthest extent of the Hoene's property line is clearly for the benefit of other residents of future developments. There is no plan or schedule on the part of the Town to construct a road in the additional right-of-way of Linrose Lane if the Plaintiffs do not make such road improvement. The Plaintiffs' development of their single-family lot will not so burden Linrose Lane with increased traffic to require its accelerated improvement. No rational nexus exists to compel Plaintiffs' dedication.

17. "In-kind Impact Fee": The imposition of an impact fee requires that the contribution which is sought by government from a party who is seeking a development or building permit must meet a three prong constitutional test as follows:

1. The contribution is specifically and uniquely attributable; or
2. Bears a reasonable relationship; or
3. Has a rational nexus with the impact of new development.

The rational nexus test has been established by the Florida courts for impact fees in Contractors and Builders Association of

Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976),
Hollywood, Inc. v. Broward County, 431 So.2d 606, (4th DCA 1983),
and Home Builders and Contractors Association of Palm Beach County,
Inc. v. Florida County Commissioners of Palm Beach County, Inc.,
446 So.2d 140, (4th DCA 1983).

The effect of the Town ordinances is to impress on an applicant for a building permit the exclusive burden to improve the level of service on existing roads, instead of allocating the burden between current residents and new residents. The Defendant's requirement of compelling the dedication of rights-of-way and having the Plaintiffs make improvements of the right-of-way to their north property line from Hall Road is an "in-kind impact fee" against the Plaintiffs. The "in-kind impact fee" imposes an unreasonable burden on new development in that this fee can not be attributed solely to the impacts of new development. The required right-of-way and road improvements are not necessary for Plaintiffs to develop their property. The exactions the Town imposes do not meet the rational nexus test.

The U.S. Supreme Court in the case of Nollan v. California Coastal Commission, 483 U.S.C. 25, 107 S.Ct. 3141, 97 L Ed., 2d 677 (1987) held that the constitution requires a governmental body to compensate a property owner when an easement is improperly exacted from a property owner as a condition of obtaining a building permit. The Nollan Court in footnote four (4) of the majority opinion states that if the Plaintiffs are singled out to bear the entire burden of a government's attempt to remedy a problem,

although they had not contributed to it more than any other citizen, the State's action, even if otherwise valid, may violate the taking clause and the equal protection clause. The Court further said that one of the principal purposes of the taking clause is to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

There exists no reason for the Town of Malabar to compel the Plaintiffs to dedicate the right-of-way and improve the existing public road of Linrose Lane except to provide for improved transportation for the existing residents on Linrose Lane and to provide good access for future growth. The required actions do not have a rational nexus to the Plaintiffs' development of their property and violate the due process provisions of the Florida and United States Constitutions. Joint Ventures, Inc. v. Dept. of Transportation, 563 So.2d 622 (Fla. 1990); Orlando/Orange County v. W & F Agrigrowth 582 So.2d 790 (5th DCA 1991).

18. Equal Protection: The record in this case is replete with examples where the Town of Malabar allowed residents, since the adoption of the road ordinance in 6-5-84, to construct single-family residences on twenty-five (25') foot rights-of-way. The Town admits that it has engaged in this practice.

There exists no difference between the Plaintiffs' property, where the building permit was denied, and other similarly situated property owners, where building permits were approved.

The Town of Malabar should not be permitted to deny the

Plaintiffs a building permit on an existing twenty-five (25') foot public road, and at the same time authorize other property owners building permits on twenty-five (25') foot roads.

The law requires that all citizens shall receive equal treatment before the law. Equal protection of the law would require that these Plaintiffs should be granted their building permit.

19. Taking: The ordinances of the Town of Malabar which impose a mandatory dedication and road construction requirement on the Plaintiffs and the Defendant's actions in denying the Plaintiffs a building permit constitute a taking under the Florida and the United States Constitutions. The case of Graham v. Estuary Properties, Inc., 399 So.2d 1374 (Fla. 1981), at page 1380, established the requirements for a taking as follows:

1. Whether there is a physical invasion of the property?

The Nollan court, supra, has held that compulsory dedications such as are required of the Plaintiffs in this case are equivalent to a physical invasion of property.

2. The degree to which there is a diminution in value of the property?

The Plaintiffs will lose from \$21,700 to \$23,600 in value or over 75% of the value of their property as a result of the Town's actions. The Town in denying the Plaintiffs a building permit has

precluded all economic use of the property.

3. Whether the regulation confers a public benefit or prevents a public harm?

The Town of Malabar road ordinances clearly serve a public benefit because it allows improved access for existing residents and future residents. The ordinances, however, contrary to the requirement of the court rulings in Graham do not prevent a public harm. An ordinance which confers a public benefit without preventing a public harm entitles a property owner to compensation.

4. Whether the regulation promotes the health, safety, welfare or morals to the public?

The purpose of the Town of Malabar requirement is to require the mandatory dedication and construction of a road which will benefit future residents and residents on existing roads. While this may serve the public welfare, the Florida Supreme Court has held the governmental regulations can meet the standard necessary for the exercise of the police power, but still result in a taking. Albrecht v. State, 444 So.2d 8 (Fla. 1984). Where there is a mandatory dedication of right-of-way for future needs brought on by general community growth, and not the impact of an applicant's project, an unconstitutional exercise of police

power occurs. Lee County, supra.

5. Whether the regulation is arbitrarily and capriciously applied?

These ordinance have been arbitrarily and capriciously applied. While the ordinances have been specifically applied to the Plaintiffs, the Town has not consistently applied these ordinances to other single-family lot owners on twenty-five (25') foot wide rights-of-way.

6. The extent to which the regulation curtails investment-backed expectations?

The Road Ordinances, when applied to the Plaintiffs, certainly curtails investment-back expectation. Plaintiffs have spent over \$7,000 preparing this site for a single-family residence. The denial of a building permit to Plaintiffs while granting other lot owners building permits will curtail all investment-back expectations on this property.

The case of First English Evangelical Luther Church of Glendale v. County of Los Angeles, California, 96 L Ed 2d 250 (1987) holds that land use regulations which are improperly imposed on private property constitute a temporary taking of the property from the time the regulations are improperly applied to the property until a court of competent jurisdiction invalidates the regulation. The Fifth District Court of Appeal reaffirmed this

principal in the Orlando/Orange County, supra, case.

When all of the facts are considered, the actions of the Town of Malabar constitute a taking under the rules established in the Graham, supra, case.

The Town of Malabar contends the issuance of this building permit on a 25 foot right-of-way will violate the 60 foot right-of-way requirement in its Comprehensive Plan. The Town has not enforced the 60 foot right-of-way requirement against other applicants. The purpose of the Local Government Comprehensive Planning and Land Development Act was not to authorize local governments to take private property without due process of law and the payment of just compensation with the adoption of a comprehensive plan. Section 163.3194(4)(a), Florida Statutes. The Town of Malabar cannot selectively enforce its comprehensive plan and ordinances against these Plaintiffs.

IT IS ORDERED AND ADJUDGED as follows:

1. That this Court has jurisdiction of this matter under the provisions of Chapter 86 of the Florida Statutes and 42 U.S.C. §1983.
2. That the Court finds for the Plaintiffs, David Hoene and Joan L. Hoene, against the Defendant, Town of Malabar. The Town of Malabar has violated the due process of law and equal protection of the law clauses of the Florida and United States Constitutions as such clauses pertain to the Plaintiffs.
3. That the Town of Malabar shall forthwith issue the Plaintiffs, David Hoene and Joan L. Hoene, a building permit for a

single family residence to be located at 2045 Linrose Lane in the Town of Malabar.

4. That the actions of the Town of Malabar constitute a temporary taking from the date when the Town of Malabar denied Plaintiffs permit on April 2, 1990 until the date that the Town of Malabar issues David Hoene and Joan L. Hoene a building permit. The Court upon the motion of either party will conduct a trial on the issue of damages arising from the taking.

5. This Court reserves jurisdiction for entry of any supplemental relief authorized under Section 86.061 of the Florida Statutes and for the purpose of awarding costs and fees in this action.

DONE AND ORDERED in Chambers in Rockledge, Brevard County, Florida this 30 day of DECEMBER, 1992.



CIRCUIT COURT JUDGE

copies furnished to:

Clifton A. McClelland, Jr., Esquire
Richard E. Torpy, Esquire

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 4
Meeting Date: April 1, 2019

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

SUBJECT: Discuss Proposed Signage Ordinance from P&Z Board

BACKGROUND/HISTORY:

The signage regulations in the Malabar Code are from the original edition in 1987. Council had directed the Planning and Zoning Board to review the table within the regulations and update it to provide for:

- Signage on Commercial zoned property
- Signage on Highway corridors
- Signage regulation updates

The P&Z Board submitted their recommendations to Council and it was then forwarded to the Attorney to put in ordinance form. The Attorney said that he must also review it against the recent Supreme Court ruling.

It went for first reading on March 19, 2018 and after discussion of all the changes, Council directed it back to P&Z with a suggestion to make it simpler.

There will be representatives from the P&Z Board at the Council meeting to answer any questions.

ATTACHMENTS:

Memo dated 3/14/19 from Denine Sherear, P&Z Board Secretary
Draft Ordinance for discussion
Portion of approved RTCM from 3/19/18
Memo to P&Z dated 3/7/17
Memo to Council dated 2/21/17

ACTION OPTIONS:

Direction to staff

TOWN OF MALABAR

MEMORANDUM

Date: March 14, 2019 19-AABO-003

To: Debby Franklin, Town Clerk /Treasurer
Town Council

From: Denine M. Sherear, Administrative Assistant to the Building official &
PZ Board

Ref: Recommendation to Council Sign Ordinance

The Chair, Wayne Abare & Board Members of PZ had the Sign Ordinance as an "Action Item" at the March 13th, 2019 Meeting. After minimal discussion the following recommendation was made:

Motion: Abare/Foster To Recommend Council Approve the Sign Ordinance as revised by Planning and Zoning.

Roll Call Vote: Foster; Aye, Abare; Aye, Ritter; Aye, Dial; Aye, Hofmiester; Aye.

Motion passed 5 to 0

REVISION UPDATES AS OF 3/13 /2019

Clean Copy

Dial color-coded edits are as follows:

- Green: This shows all "new" input and changes for Signage Ordinance by Attorney to last P&Z submittal (entitled ARTICLE XIX SIGNAGE VERBIAGE).
- Orange: This shows areas of ARTICLE XIX SIGNAGE VERBIAGE document submitted by P&Z that were "unchanged" by the Attorney.
- Purple: For ease of review, I have shown (with a few exceptions noted) areas removed by the Attorney from the P&Z submitted ARTICLE XIX SIGNAGE VERBIAGE document. My assumption is that "most" of these will end up being removed per the Attorney's suggestions.
- Blue: There is one area in which a section was deleted by P&Z and added back-in by the Attorney. I believe this was inadvertent.

ORDINANCE 2019-xx

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

WHEREAS, The **Town** adopted a Sign Code which is part of the **Town's** Land Development Regulations; and,

WHEREAS, the United States Supreme Court issued a decision in Reed v. Town of Gilbert, ___ U.S. ___, 135 S. Ct. 2218, 192 L. Ed. 2d 236, 2015 U.S. LEXIS 4061, 83 U.S.L.W. 4444, 25 Fla. L. Weekly Fed. S 383 (U.S. 2015), whereby the Court held that content based sign regulations violate the First Amendment to the United States Constitution; and,

WHEREAS, the United States Supreme Court provided that local governments have ample content-neutral options available to resolve problems with safety and aesthetics, including, sign size, building material of signs, lighting, moving parts, portability, restricting location on public property, view obstruction, distraction to motorists, and such signs as traffic signs and signs identifying hazards, or street number signs may be justified by traditional safety concerns; and,

WHEREAS, the **Town** is amending its sign code to comply with the ruling of the United States Supreme Court to provide content-neutral regulations.

SECTION 1. Article XIX of the Land Development Code of the Town is amended in full to read as follows

Section 1-19.1. - Definitions.

For the purposes of this article certain words and terms shall be interpreted as follows:

Abandoned Sign. A sign is considered abandoned if a business advertised on that sign is no longer licensed, no longer has a certificate of occupancy, or is no longer doing business on that location.

Banner/Flag. A sign having characters, letters, illustrations or ornamentations applied to cloth, paper or fabric of any kind with only material for a backing. The term shall include any animated, inflatables, rotating and/or fluttering device designed to attract attention.

District shall mean the various zoning districts established and described by the land development code.

Electric. Any sign containing electric wiring. This does not include signs illuminated by an exterior floodlight source.

Erect shall mean to build, construct, attach, hang, place, suspend, affix and; this shall include the painting of wall signs.

Freestanding. A sign erected and maintained on a freestanding frame, mast or pole not attached to any building, and not including ground mounted signs.

Government Sign. A government sign is a sign that is constructed, placed or maintained by the federal, state or local government or a sign that is required to be constructed, placed or maintained by the federal, state or local government either directly or to enforce a property owner's rights.

Ground Mounted. A sign which extends from the ground or has support which places the bottom of the sign less than two (2) feet from the ground.

Height. Maximum height is the vertical distance between the uppermost portion of a sign and ground level and minimum height is the vertical distance between the lowermost point of a sign and ground level.

Highway Sign. A Freestanding sign or Integral Sign or Flat Mounted Sign that is erected and maintained within the view of motorists who are driving on a highway.

Integral. A sign that is embedded, extruded or carved into the material of a building façade. A sign made of bronze, brushed stainless steel or aluminum, or other material attached to the building façade.

Non-Conforming shall mean any existing sign which was lawful at the time of the enactment of the ordinance from which this article was derived but which does not conform to the provisions of this article and to the most recently enacted land development code of the Town.

Off site-sign. A sign which has no relation to the property it is located on.

Placement shall mean the location which a sign occupies on a lot or building.

Public Body shall mean any government or government agency of the Town, Brevard County, State of Florida, or the United States Government.

Replacing shall mean rebuilding, enlarging change in size, structure, or lettering other than maintaining original sign.

Sign shall mean a device which gives information to people that see it.

Sign Area shall mean that area within a line including the outer extremities of all letters, figures, characters, and delineations, or within a line including the outer extremities of the framework or background of the sign, whichever line includes the larger area. The support for the sign background, whether it be columns, a pylon, or a building; or part thereof, shall not be included in the sign area. In measuring the area of a double-faced sign, only one face shall be calculated to determine the total area.

Sign Construction Class shall mean the manner in which any sign type is constructed and/or located, and in this article shall include as defined below:

- (1) **Animated, Spectacular or Intensely Lighted sign** shall mean any sign of which all or any part thereof revolves, swings or moves in any fashion whatsoever, and any sign which contains or uses for illustration any light, lights or lighting device or devices which change color, flash or alternate, shows movement or motion, or change the appearance of said sign or any part thereof automatically, including wind operated devices, This also includes Electronic, LED, and Digitally operated devices.
- (2) **Beacon Light** shall mean any light with one or more beams capable of being directed in any direction or directions, or capable of being revolved automatically, or capable of having any part thereof revolve automatically, or a fixed, flashing, or rotating high intensity light or beam, or light.
- (3) **Detached** shall mean a sign not attached to or painted on a building, but which is affixed to the ground. A sign attached to a flat surface such as a fence or wall not a part of a building, shall be considered a detached sign.
- (4) **Flashing** shall mean any sign on which the electrical lighting device or devices go on or off alternately, either all of such lights or lighting devices or part thereof. Any revolving illuminated sign shall be considered a flashing sign.
- (5) **Marquee** shall mean any sign attached to or projecting from a building, whether or not such a sign is capable of being raised or lowered to a position flat against a wall.
- (6) **Portable** shall mean any sign which is not securely and permanently attached to the ground or a building or other approved structure, such as banner/flag signs.
- (7) **Projecting** shall mean any sign that is affixed to any building, wall, or structure extending more than twelve (12) inches beyond such building, wall or structure. The term projecting sign includes a marquee sign.
- (8) **Snipe** shall mean any temporary sign of not over four (4) square feet in area.
- (9) **Wall** shall mean any sign which is erected on the wall of any structure or part of a structure and is not more than twelve (12) inches from that structure, including any sign which is painted or otherwise directly on the wall of any structure.

Sign, Double-Faced shall mean a sign with two (2) parallel or nearly parallel faces back to back and located not more than twenty-four (24) inches from each other at the nearest parts. A double-faced sign shall be considered a single sign.

Sign, Directly Illuminated shall mean a sign designed to give forth artificial light itself and/or designed to reflect light from one or more sources of artificial light that are part of the sign.

Sign, Indirectly Illuminated shall mean a sign which does not produce artificial light from within itself but which is opaque and backlighted or illuminated by spot lights or floodlights.

Sign, Number shall mean for the purpose of determining the number of signs, a sign shall be considered to be a display and/or display device containing elements organized, related, and/or composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, each element shall be considered a single sign.

Sign Structure shall mean any construction designed to support a sign is considered separate from the sign itself.

Sign Type shall mean any one of the various signs as defined below:

- (1) *Accessory* shall mean a sign relating only to the premises on which the sign is located.
- (2) *Billboard* shall mean any sign or display that has no relation to the property it is located on, and over sixty (60) square feet.
- (3) *Construction* shall mean a temporary sign erected on a building site between the time of the issuance of the building permit and the completion and/or occupancy.
- (4) *Directional* shall mean any sign less than three (3) square feet in area used for public direction.
- (5) *Directory* shall mean signs which are located in close proximity to entrances of buildings generally used as a message board to assist visitors who desire to enter or use the building.
- (6) *Future Improvement* shall mean a temporary sign located on vacant land, parcel or lot prior to the issuance of a building permit on the site on which the sign is located.
- (7) *General Outdoor Advertising* shall mean any sign which is not herein described or limited by these definitions and regulations.
- (8) *Outdoor Display* shall mean each piece or portion of any matter, merchandise, or device displayed outside a building with the intent of advertising, demonstrating, or identifying the nature of business or articles for sale.
- (9) *Temporary. Balloons, banners, flags, pennants, posters, portable signs, snipe* or advertising displays constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, plywood or other like materials and that appears to be intended to be displayed for a limited period of time. ~~Snipe signs are prohibited.~~

Section 1-19.2. - Purpose and intent.

The purpose of these regulations is to promote the public safety, comfort, convenience, aesthetics, amenities, prosperity and general welfare of the Town. More particularly, these

regulations which control the location, type, size, height, and illumination of signage and displays are intended to establish compatible land use character, an orderly appearance and stabilize land values.

Section 1-19.3. - Exemptions.

The following are exempted from the provisions of these regulations which require a permit, certificate, license or fee for erection or maintenance: Also, any and all allowed &/or required Federal, State, County, &/or Local Signage or Flags as covered per their regulations and as such shall abide by their rules and regulations relating to each. These may be regarding Public Display for: information, location, display protocol, public safety, traffic safety, etc.

The following signs are authorized in every area:

- (1) Signs not visible from areas other than the site on which they are located;
- (2) Integral decorative or architectural features of structures, except letter, trademarks, moving parts, or moving lights.
- (3) Memorial, Historically signs, tablets or plaques or names of buildings and date of erection; when the same are permanent.
- ~~(7)~~(4) Changing the copy of a bulletin board, poster board, display encasement, or marquee provided, ~~however,~~ that the device upon which the copy is located meets all the requirements of this article;
- ~~(8)~~ (5) Decals affixed to or signs painted on equipment used for dispensing retail products or services where such signs are not displayed in connection with a commercial promotion or as an advertising device;
- ~~(9)~~ (6) Temporary signs as provided for in 1-19.10
- ~~(10)~~ (7) Signs on motor vehicles while in use in the normal course of business. This section shall not be interpreted to permit parking of a vehicle or portable trailer on which signs are attached or painted in a manner or location where such signs are not permitted in order to avoid the requirements of this article.

Section 1-19.3.1 (intentionally left blank)

Section 1-19.3.2 Prohibited Signs and Exceptions.

The following signs and message devices shall be expressly prohibited in all zoning districts, except as otherwise authorized by this ~~chapter~~ Ordinance:

~~(2)~~ The following signs are strictly prohibited:

~~(E)~~ (A) *Signs in public areas.* No sign shall be placed or permitted to be placed on any curb, sidewalk, post, pole, hydrant, bridge, tree or any other surface located on public property or right-of-way or over or across any street or public thoroughfare, except as may otherwise be authorized by this ~~chapter~~ Ordinance. Signs shall be considered litter and removed by the town without notice.

~~(H)~~ **(B)** *Unclassified signs.* The following signs having no distinct classification shall be prohibited:

(1) Signs which bear or containing statements, words or pictures of an obscene or pornographic character or which contain advertising matter which is obviously untruthful **or offensive**

~~(4)~~ **(2)** Signs which emit audible sound, odor or visible matter; and/or

~~(5)~~ **(3)** Signs which purport to be or are an imitation or resemble official traffic signs or signals or which bear the term "stop," "go slow," "caution," "danger," "warning" or similar term or which because of their size, location, movement, content, coloring or manner of illumination may be confused with or construed as traffic control signs, signals or devices or the light of an emergency or road equipment vehicle or which hide from view any traffic or street sign, signal or device.

~~(K)~~ **(C)** *Roof signs.* No roof signs shall be permitted.

~~(M)~~ **(D)** *Billboards.* Except as may be otherwise authorized by town code, billboards are prohibited.

Section 1-19.3.3. Regulations Applicable to all Districts.—Additional **All** regulations relating to signs in all Zoning Districts are found in Table 1-19.18. Such regulations in Table 1-19.18 shall control over any conflicting provision of this sign code.

(E)

In addition to the other types of signs permitted in this section a business establishment may erect one additional non-permanent ground sign, not exceeding four (4) square feet. Such sign may be double sided and shall have the sign face made of wood, metal or plastic. The post material for the sign shall be made of either steel or pressure treated wood. The top of the sign when installed into the ground shall not exceed **(10)** feet above the ground upon which it is placed. An application form, provided by the Town along with a permit fee established by resolution of the Town council and consent of the owner of the property shall be submitted to the Building Department for review. If the owner does not give their consent no such sign shall be permitted. Any similar signs, including any banner signs, which have been installed or placed on property without a permit shall be removed by the owner of said sign or the proprietor of the business for which such sign relates to within 10 days of written notification of the Town and such notice shall inform the owner of such sign of the provisions **,see Table Table 1-19.18.**

Section 1-19.4. - Administration requirements.

A. *Permits/Required Inspections.* Before any sign **(other than temporary)** is erected, constructed, posted, painted, altered, maintained, affixed, or relocated in the Town, a permit for such sign shall be obtained from the Building Official.

The contractor or owner securing the permit for any sign shall call the Building Official and request an inspection whenever any sign requiring a permit is being installed, and before any concrete is poured; a final inspection shall be requested upon completion. At the time of a request for final inspection, a photograph of the completed sign shall be taken by the inspector. (Minimum 2¼" × 2¼", maximum 3" × 5" for filing purposes.) No sign permit shall be approved unless it has been inspected by the Building Official and it is found to comply with this code, the

building code, electrical code, and other applicable land development regulations. Unless otherwise provided herein, all signs shall meet the yard requirements of the zoning district in which the sign is located.

B. Filing of Application. Before any permit is issued, an application provided by the Building Official shall be filed in triplicate together with two (2) sets of drawings and/or specifications as may be necessary to fully advise and acquaint the Building Official with the location, construction, materials, manner of illumination, securing, wording of the sign, and any other data that may be required to ensure the enforcement of these regulations. One (1) set of drawings and/or specifications will be returned to the applicant with the permit. A separate application shall be made for each and every sign.

As a minimum the sign application shall include the following information:

- (a) Name, address and telephone number of the sign erector and the sign owner.
- (b) Written statement signed by landowner, or a lease or rental agreement, authorizing the placement of the proposed sign.
- (c) Location of building (or structure) and lot to which or upon which the sign is to be placed or maintained.
- (d) Purpose of sign.
- (e) Estimated value of sign.
- (f) Position of the sign in relation to lot lines, nearby buildings or structures, sidewalks, streets and intersections.
- (g) Type of sign and general description of structural design and construction materials to be used.
- (h) Two (2) copies of detailed scaled drawings of the plans which shall contain specifications concerning structural details of the method of sign construction, installation, [and] anchoring to the building or ground. The specifications shall show height, perimeter and area dimensions, elevations, means of support, method of illumination and any other significant aspect of the proposed sign.
- (i) A statement indicating whether or not an electrical permit is required for said sign and any support data required for the same.
- (j) A layout with sign colors shown or specified.
- (k) Any other information required by the Building Official in order to carry out the purpose and intent of this article.
- (l) All signs having unusual structure features shall be designed by an engineer, who shall submit to the Building Official complete plans and calculations so as to determine whether the sign complies with the Town's Code.

C. Permit Expiration. All signs shall be erected on or before the expiration of thirty (30) days from the issuance date of the permit, otherwise the permit shall become null and void and a new permit and fee shall be required.

~~**D.**~~ **Notice Required for Violations.** In case any sign shall be installed, erected, constructed, or maintained in violation of the terms of this article, the building inspector shall in writing, notify the owner thereof, to alter, change, or remove, such sign so as to comply with this article with ten (10) days notice.

F.E. Revocations. The Building Official may revoke a permit or approval, issued under the provisions of this Code, if it is found that there has been any false statement, concealment or misrepresentation as to any material fact in the application or plans on which the permit or approval was based.

Section 1-19.5. - Annual license required. (intentionally left blank)**Section 1-19.6. - Appeals and variances.**

Matters involving appeal of an administrative decision or variance of these regulations shall be handled pursuant to Section 1-12.2 of Article 12 of the Land Development Regulations.

Section 1-19.7. - Nonconforming signs.

A. *Replacement of Nonconforming Signs:* Any replacement sign needs to meet current codes.

B. *Nonconforming Signs:* There presently exist certain signs that are not in compliance with current regulations, if they were to code when approved and are being maintained they are allowed to remain.

C. *Signs and Disrepair.* A sign should be removed or repaired to original condition. If not repaired within sixty (60) days of written notification, sign will be removed at owner's expense.

Section 1-19.8. - Fees for permit, certificate, and license fees.

A. *Status of Fees Required for Signs.* Fees for the issuance of sign permits or certificates and annual licenses shall be in addition to any other fees, charges, or obligations legally required by the Town.

B. *Schedule of Fees Set By Town Council.* The fee schedule for the issuance of sign permits, certificates of nonconformance, and annual licenses and the inspections herein authorized or required shall be set by the Town Council and shall be maintained in the Town Clerk's office.

Section 1-19.9. (Intentionally left blank)**Section 1-19.10. (Intentionally left blank).****Section 1-19.10. – Temporary Signs****Regulations involving Temporary Signs**

~~(9)~~ **(1)** The sign face of any temporary sign must not be larger than four (4) square feet.

~~(10)~~ **(2)** ~~The signs identified herein~~ **Temporary Signs** shall not require a sign permit

(3) Also, any and all allowed &/or required Federal, State, County, &/or Local Signage or Flags as covered per their regulations and as such shall abide by their rules and regulations relating to each. These may be regarding Public Display for; information, location, display protocol, public safety, traffic safety, etc.

Section 1-19.11. - General regulations.

A. *Signs on Public Property.* No sign shall be placed on property owned or leased by any government agency except by a public body or as otherwise specifically provided herein.

B. *Signs Indicating Point of Public Interest.* Signs indicating points of local interest may be placed on public property only with the express consent and formal approval of the Council.

C. *Signs Affixed to Public Property or Infrastructure.* No signs shall be attached to or painted on utility poles, seawalls, retaining walls or other supporting structure.

E. **(D)** *Signs On or Over Public Streets.* No sign shall be erected or located on or over any public street, sidewalk, alley, or right-of-way other than duly approved traffic signs authorized by a governmental entity.

F. **(E)** *Illuminated Signage.* The lighting of illuminated signs shall be controlled in direction, focus, and intensity so as to prevent glare on surrounding streets or property, or any objectionable illumination of nearby property or buildings.

G. **(F)** *Beacon Light.* No beacon light shall be permitted on a sign in the Town.

K. **(G)** *Billboards.* No billboards shall be permitted in the Town.

M. **(H)** *Multiple Street Frontage.* The regulations contained in this article shall apply separately and individually to each street frontage of a premises.

Section 1-19.12. - Construction standards.

All signs shall comply with all applicable standards of the Town's building code, fire code, health code, and all other applicable codes.

Section 1-19.13. - Maintenance.

All signs, together with all their support braces, guys, and anchors, shall be maintained in good repair and appearance. The Building Official may, upon written notice, cause to be removed within sixty (60) days any sign which becomes a safety hazard, or which shows gross neglect or becomes dilapidated or where the area around such sign is not well maintained. Such removal shall be at the expense of the owner or lessee of any sign that is not properly maintained.

Section 1-19.14. (Intentionally left blank)

Section 1-19.15. - Obstructing exits prohibited.

No sign, including guys wires and supports, shall be erected, constructed or maintained so as to obstruct any fire escape, or any window or door opening, used or required as a means of ingress, egress or ventilation, or so as to prevent free passage from one part of a roof in any form, shape, or manner to a fire escape.

Section 1-19.16. - Signs not to constitute a traffic hazard.

No sign shall be placed at any location in the Town where it may interfere with or obstruct the view of any motorist, or be confused with any authorized traffic sign, signal or device. The Town Council shall have the authority to refuse the erection, or to order the removal by the Building Official, if any signs constituting an obstruction to motorists or pedestrians or otherwise are viewed to be impediments to traffic safety or traffic flow.

Section 1-19.17. - Signs not to encroach into electric utility clear zone.

No sign shall be placed closer than eight (8) feet from the nearest part of any utility pole which supports electrical transmission lines. No sign shall be placed closer than eight (8) feet from the nearest part of any electric transmission line. If the National Electric Safety Code is now or hereafter more restrictive than the provisions of this subsection, its more restrictive provisions shall supersede the provisions herein.

Section 1-19.18. - District sign regulations.

The provisions of Table 1-19.8 "Zoning District Sign Regulations" shall apply to each lot or parcel of land, and/or each business establishment as may be applicable in each case. In the following zoning classifications, the specified sign types and construction classes shall be permitted subject to the restrictions and limitations contained herein.

Also, any and all allowed &/or required Federal, State, County, &/or Local Signage or Flags as covered per their regulations and as such shall abide by their rules and regulations relating to each. These may be regarding Public Display for; information, location, display protocol, public safety, traffic safety, etc.

TABLE 1-19.18. ZONING DISTRICT SIGN REGULATIONS

Sign Regulations Within Residential Zoning Districts: (1)

Sign Type	Accessory	Construction	Directory	Directional
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	1	1	1
Maximum Area	4 sq. ft.	32 sq. ft.	10 sq. ft.	3 sq. ft.
Maximum Height	40 sq. ft. <u>10 ft.</u>	Detached: 10 ft. Wall: Roof line of building	10 ft.	Detached: 3 ft. Wall: 12 ft.
Placement	Must observe all yard regulations	Front setback: 10 ft. Side and Rear: 25 ft.	Must observe all yard regulations	Non-Restricted
Illumination	None	None	Indirect	None
Special Regulations	Permitted only in conjunction with a permitted home occupation. See Footnote 1.	Must be removed immediately upon completion of construction or occupancy	None	None

Sign Type	Future Improvement	General Outdoor Advertising
Construction Class	Detached	Wall or Detached
Maximum Number	1	1
Maximum Area	10 sq. ft.	32 sq. ft.
Maximum Height	10 ft.	10 ft.

Placement	Front setback: 10 ft. Side and Rear: 25 ft.	No signs to impede vision at any intersection
Illumination	None	None
Special Regulations	None	See Footnotes 1 and 2

Sign Regulations Within Non-Residential Zoning Districts: (2)

Sign Type	Accessory	Accessory	Accessory
Construction Class	Wall	Detached, Marquee, and Projecting	Snipe
Maximum Number	3	2 total from this group	4
Maximum Area	10% of the wall area, and no more than 60 sq. ft. of cumulative area	60 sq. ft. total cumulative area	4 1/2 sq. 4 sq. ft. each
Maximum Height	Roof line of building	Detached: 25 ft. Others: Roof line of building	Roof line of building
Placement	Non-Restricted	Must observe yard regulations and Front setback: 10 ft.	Must observe yard regulations
Illumination	Direct, Indirect	Direct, Indirect	None
Special Regulations	See Footnotes 1, 3, and 4	See Footnotes 4 and 5	None

Sign Type	Construction	Directory	Directional	General Outdoor Advertising
Construction Class	Wall or Detached	Wall or Detached	Wall or Detached	Wall or Detached
Maximum Number	1	2	2	1
Maximum Area	32 sq. ft.	Sum of 30 sq. ft.	3 sq. ft. each	Detached: 3 sq. ft. Wall: 10 sq. ft.
Maximum Height	Detached: 10 ft. Wall: Roof line of building	10 ft.	Detached: 3 ft. Wall: 10 ft.	10 ft.
Placement	Front Setback: 10 ft. Rear and Side: 25 ft.	Must observe all yard regulations	Non-Restricted	Front setback: 10 ft. Rear and Side: 25 ft.
Illumination	Indirect	Indirect	Indirect	Indirect
Special Regulations	Must be immediately removed upon completion of construction or occupancy	None	None	See Footnotes 1 and 2

Sign Regulations Within Non-Residential Zoning Districts: (3)

Sign Type	Future Improvement
Construction Class	Detached
Maximum Number	1
Maximum Area	32 sq. ft.
Maximum Height	10 ft.
Placement	Front setback: 10 ft. Side and Rear: 25 ft.
Illumination	Indirect
Special Regulations	None

Footnotes to charts:

- (1) All inside signs within five (5) feet of a window shall be counted as wall signs and in addition shall not exceed twenty (20) inches of the glassed area of the window in which the sign is located.
- (2) Only permitted are those signs which may be off the premises for which they relate and are within two hundred (200) feet of the property for which they relate to. However, if the sign is three (3) square feet or less in area, the property to which the sign relates may be within one (1) mile of the sign.
- (3) Apartment complexes and dwellings of up to ten (10) units are permitted thirty-two (32) square feet. For excess of ten (10) units, one (1) square foot may be added for each unit, up to a maximum of forty-eight (48) square feet in cumulative area.
- (4) If illumination is permitted, sign may not be animated and/or flashing.
- (5) One additional sign of this construction class up to thirty (30) square feet in area shall be permitted for each two hundred (200) feet of street frontage.
- (6) For a group of more than four (4) sites and in lieu of the nine (9) square foot individual lot sign, one thirty-two (32) square feet shall be permitted.

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

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

SECTION 5. Inclusion in Code. It is the intention of the Town Council of Malabar that the provisions of this ordinance shall become and be made a part of the Town Code, and that the sections of this ordinance may be renumbered or 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 6. Effective Date. This ordinance shall take effect upon adoption.

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

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

Exhibit: Agenda Report No. 3
Recommendation: Approval of 1st Reading of Ord 2018-02

Ordinance read by title.

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

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

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

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

Discussion:

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

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

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

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

Atty said we don't do proactive code enforcement. Bad facts make bad law. Town of Gilbert in PA was sued because they gave someone a hard time over a directional sign. That went to the

Supreme court. For instance - can't define a sign as "political" or "for sale" – that would be unconstitutional and cannot be enforced.

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

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

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

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

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

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

TOWN OF MALABAR

MEMORANDUM

Date: March 7, 2017 2017-TC/T-023
To: Planning and Zoning Board / Denine Sherear, Board Secretary
From: Debby Franklin, Town Clerk / Treasurer
Ref: Code Amendment re: Signage, Art XIX, Table 1-19.18

The Malabar Town Council approved the proposed signage at the Route 1 Motor Sports project on March 6, 2017. Staff requested Council approval because the language in the Code does not differentiate between non-residential zoning and commercial zoning. It also does not provide for regulations for signage on major highways with speed limits of 55 mph and along Malabar Road in the 30 mph areas.

The Building Official wrote a memo to Council supporting the approval stating the size of the building and the lot should also be considerations.

I have attached Table 1-19.18, Zoning District Sign Regulations, the memo from the Building Official and the portion of Draft minutes from 3/6/17.

Council would like the P&Z Board to update the Table and the Footnotes.

Attachments:

TOWN OF MALABAR

MEMORANDUM

Date: February 21, 2017 2017-BO-012
To: Honorable Mayor and Town Council
From: Daryl Munroe, Building Official
Ref: Approval for Signs in CG Zoning – Route 1 Motor Sports
1300 Highway 1, Malabar

KellWill Inc. has received Site Plan approval and the Building Permit has been issued for construction of their 25,000 sf retail and service facility known as Route1 Motorsports.

The height of the building is 25 feet and is being constructed towards the back of the 2.97 acre lot with a finished floor elevation (FFE) of 28 feet. The applicant is now ready to contract with a sign company to begin the advertising portion of the development.

The size, color, material and type of signage was not provided as part of the site plan review. Because of this staff desires Council approval of the proposed construction of the signage so the building permit package is complete.

The applicant is requesting a 20-foot tall freestanding sign near the driveway entrance and then the manufacturers logos on the mansard roofline. Illustrations for these signs are attached.

The proposed signs comply with the Malabar Code for height and setbacks. There is language in the Code that restrict the sign "faces" from exceeding a maximum of 60 *cumulative* square feet.

Staff is requesting Council approval of the proposed signs, noting that this restriction in the Malabar Sign regulation dates to the original code and is not based on the size of the building or parcel. It would be staff's recommendation to delete this restriction from the Code. Such a restriction is not consistent with commercial development on a major arterial roadway like Highway 1.

TOWN OF MALABAR AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: April 1, 2019

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

SUBJECT: Discuss Proposed Depth of Six Parcels on the south side of Malabar Road for both R/LC and OI Land Use Designations on FLUM before final Adoption

BACKGROUND/HISTORY:

The property owners of two of the six 1,320' deep parcels on the south side of Malabar Road have asked Council to reconsider the 660' depth for the land use designations. They would ask that the entire parcel have the same land use designation. In addition, the attorney representing the Weber Woods LLC objects to the land use designation of "Office Institutional".

The P&Z Board had originally recommended the entire parcels be included in the land use designations on the south side of Malabar Road. The parcels under discussion are shown on the next page as lots 1, 2, 3, 4, 5 and 6.

Lots 1, 2 and 3 would have the OI land use designation, but only for the front 660', keeping RR for the rear portion. These lots at the west end of Town (lots 1, 2 and 3) have market values of \$580,000.00 to \$600,000.00 each.

Lot 4 is identified to be changed from RR to OI, but only for the front 660' of the parcel. It has a market value of \$338,000.00.

Lots 5 & 6 are identified to be changed from RR to R/LC but only for the front 660' of those parcels. Those parcels have a market value of \$140,000.00 to \$193,320.00.

Since the Comprehensive Plan Amendment was sent to the State, we have received written opposition from representatives of lots 4 and 5.

The Town Planner is completing the revisions proposed by the State to the Comprehensive Plan amendment and would like to include the finalized Future Land Use Map.

Staff is asking for Council discussion on whether to maintain the split designations on these six lots or assign the land use designation to the entire parcel.

Knowing how Council wants to address this land use designation will assist staff in getting the final map correct.

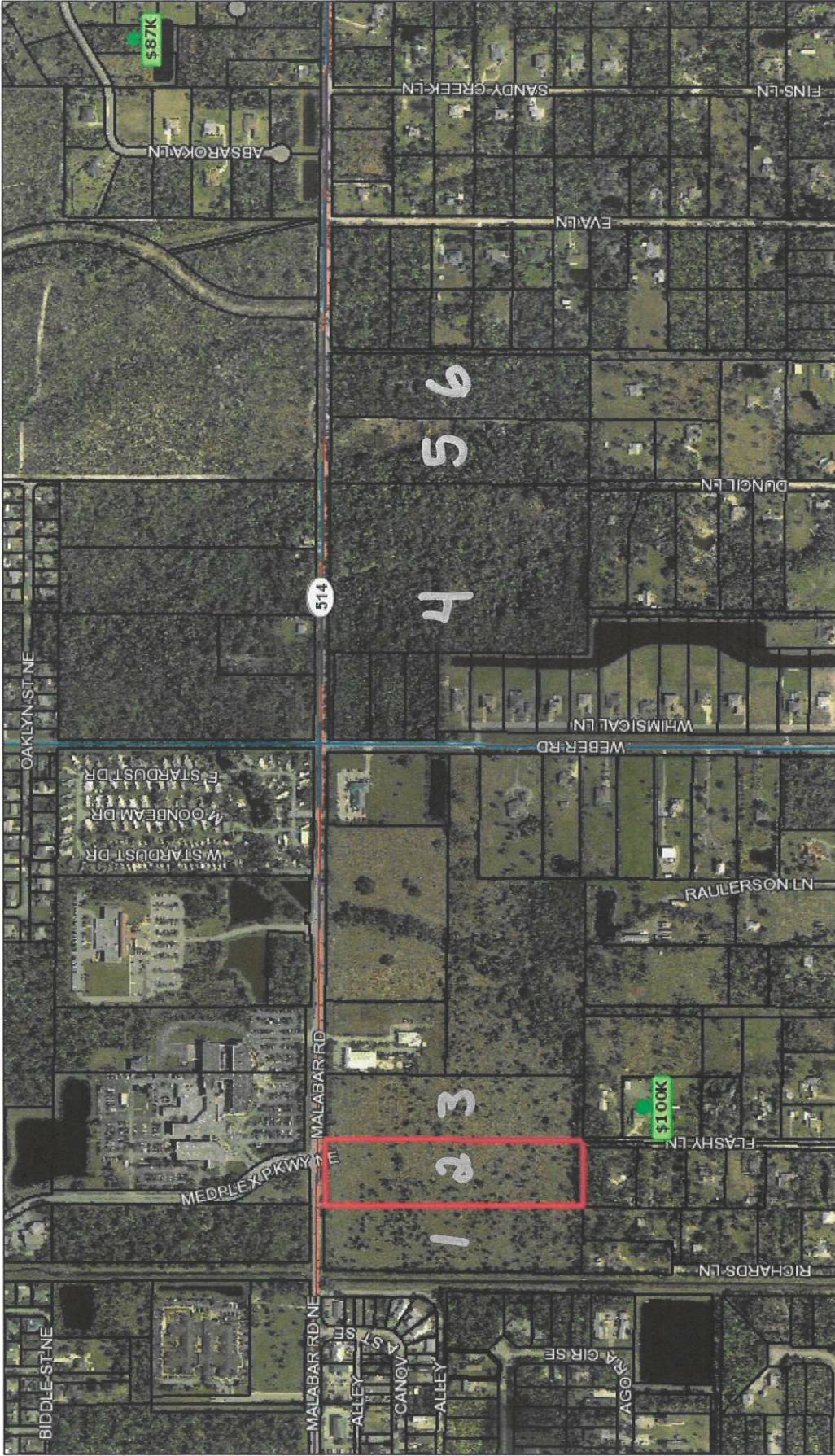
ATTACHMENTS:

- Aerial of the six lots under discussion.
- Map included in the Comprehensive Plan Amendment sent to the State showing how the designation would split the parcels.
- Letter from Ms. Hirsch
- Letter from Gray Robinson for the Weber Woods LLC property (lot 4)

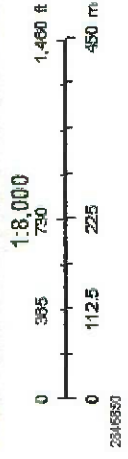
ACTION OPTIONS:

Direction to staff

Brevard County Property Appraiser



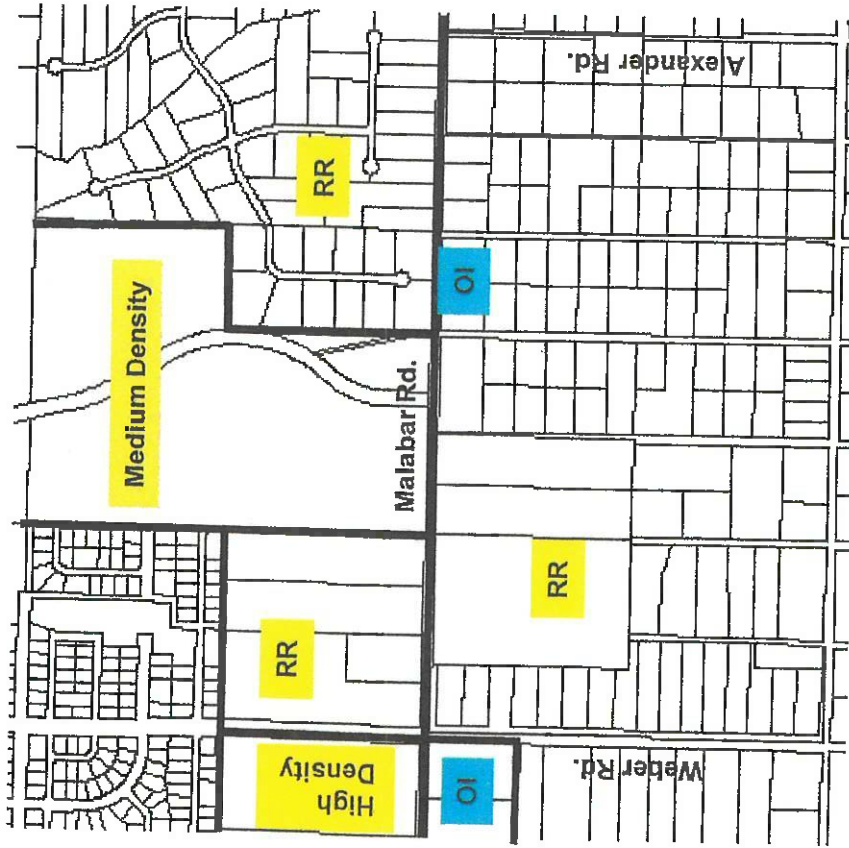
March 25, 2019



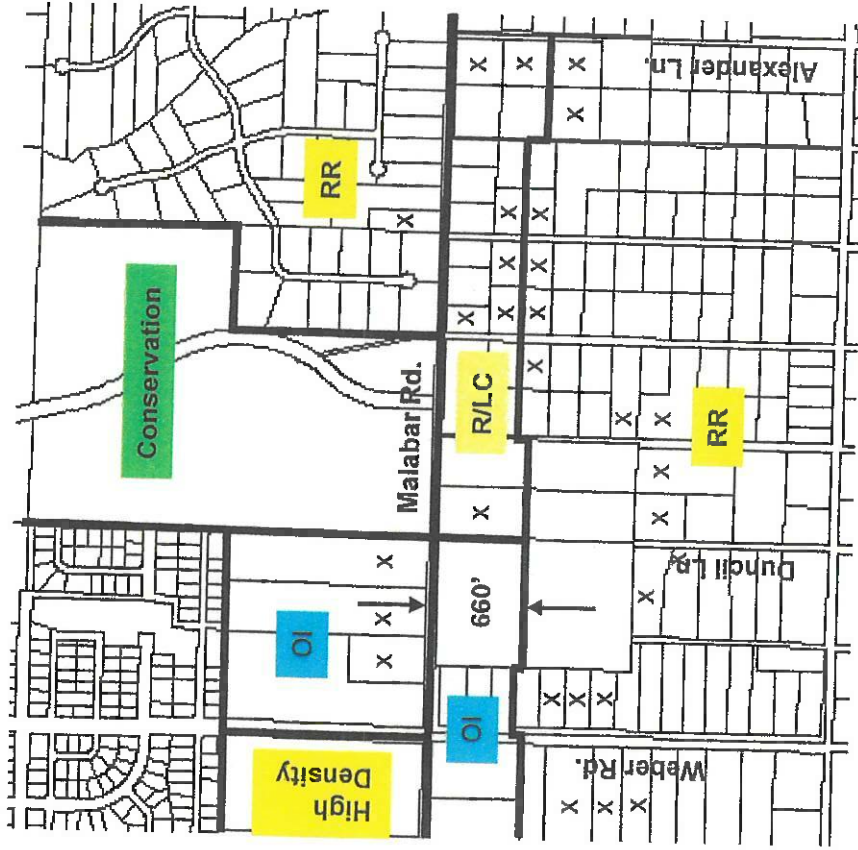
For illustration only. Not a survey. Map layers may not precisely align.
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Land Use Along Malabar Rd. (Weber Rd. to Alexander Ln.)

Present Land Use



Proposed Land Use



X = Homes

October 1, 2018

OCT 31 2018

RECEIVED

October 30, 2018

Juliana Hirsch
1035 Malabar Road
Malabar, FL 32950

Town of Malabar
Mayor Reilly and Town Council
Planning and Zoning Board Members
Town Administrator
Town Clerk/Treasurer

RE: Proposed FLUM Amendment transmitted to State

Please be advised that I strongly object to the proposed land use designation changes presented at the October 1, 2018 Council meeting as it adversely affects my ten-acre property by dividing it into two different land use designations.

After the Planning and Zoning Board diligently and carefully studied the FLUM for about five years, they made their recommendations to Council to designate the entire ten acres as Residential/Limited Commercial (R/LC) on the FLUM. The Planning and Zoning Board stated their intent was to keep entire parcels intact along the corridor. This recommendation was accepted by Council after the presentation on 12/7/15 with a vote of 5 to 0 in support.

Since that time, Council has held additional meetings and the designation of R/LC was reduced to a depth of 660' effectively dividing my ten-acres into two land use designations; commercial in the front and rural residential in the rear. The suddenness of this change makes me suspect the interest of certain council members has changed and they voted to send this package to Tallahassee without consideration of the property owners.

Again, I object vigorously to this proposed change to the FLUM that would divide my property into two different land use designations, leaving half undesirable and creating a great loss of revenue and potential tax to the Town.

Sincerely,



Juliana Hirsch
321-960-8663

cc: Mr Ray Eubanks, DEO

GRAY | ROBINSON
ATTORNEYS AT LAW

TOWN OF MALABAR

1795 WEST NASA BLVD.
POST OFFICE BOX 1870 (32902-1870)
MELBOURNE, FLORIDA 32901
TEL 321-727-8100
FAX 321-984-4122

BOCA RATON
FORT LAUDERDALE
FORT MYERS
GAINESVILLE
JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA
WEST PALM BEACH

DEC 17 2018
RECEIVED

Jack A. Kirschenbaum

321-727-8100

JACK.KIRSCHENBAUM@GRAY-ROBINSON.COM

December 12, 2018

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Debbie K. Franklin, Town Clerk
Town of Malabar
2725 Malabar Road
Malabar, FL 32905

The Department of Economic Opportunity
Caldwell Building
107 E. Madison Street
Tallahassee, FL 32399

Re: Town of Malabar Comprehensive Plan Amendment 2008-01
Ordinance 2008-16

Gentlemen:

The undersigned represents as attorney Weber Woods, LLC, a property owner whose property is subject to the above-referenced Comprehensive Plan Amendment and Ordinance.

Please consider this correspondence an objection to the approval and adoption of the Comprehensive Plan Amendment and Ordinance referenced above. My client is an affected person. My client's property is located on the south side of Malabar Road and east of Weber Road. The proposed changes would cause the present land use of RR to be changed to OI for the north 660 feet of the property. There exists no practical physical nor planning purpose for this change and it severely impacts the long planned usage of the property. Further, it eliminates or severely curtails the economic viability of my client's use of the property.

The proposed land use change constitutes an unreasonable governmental restriction on my client's intended and long-standing use of the property.

My client's acquisition of the property and its reliance on the long-standing current allowable uses on the property have caused it to expend considerable sums to develop the property under the existing land uses and ordinances. Its acquisition and planning would not have occurred but for these long-standing uses that they have a right to expect to continue into the future.

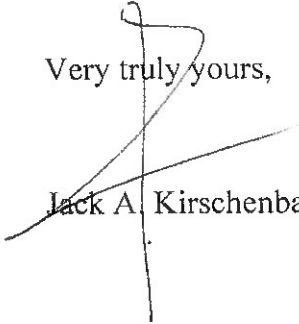
Debbie K. Franklin, Town Clerk
The Department of Economic Opportunity
December 12, 2018
Page 2

Additionally, the Comprehensive Plan Amendment is both arbitrary and capricious, not consistent with the overall Comprehensive Plan of the Town and there was insufficient evidence presented to the Town to adopt the Plan Amendment.

Further, the widening and changes to Malabar Road including the imposition of median will deny the adequate access to the property should the Plan Amendment be adopted.

On behalf of my client, I request that the proposed land use changes as to the Weber Woods, LLC property not be approved.

Very truly yours,


Jack A. Kirschenbaum

JAK/kf