

TOWN OF MALABAR

PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY, APRIL 9, 2008
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

REVISED AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE
- B. ROLL CALL
- C. ADDITIONS/DELETIONS/CHANGES
- D. CONSENT AGENDA
 - 1. Approval of Minutes
Regular Planning and Zoning Meeting – 3/26/08
Exhibit: Agenda Report No. 1
Recommendation: Action
- E. PUBLIC HEARING:NONE
- F. ACTION:
 - 2. Proposal from Calvin-Giordano and Associates for E.A.R. amendments
Exhibit: Agenda Report No. 2
Recommendation: Action
 - 3. Request for Exception to Fence Height, Applicant Shondalyn Roberts,
1890 Eva Lane, Malabar
Exhibit: Agenda Report No. 3
Recommendation: Action
 - 4. Amend LDC for Fences/Walls for S/D Developments (Proposed
Ord No. 2008-99)
Exhibit: Agenda Report No. 4
Recommendation: Action
- G. DISCUSSION ITEMS –
 - 5. Fencing in general
Exhibit: Agenda Report No. 5
Recommendation: Discussion and possible action
- H. OLD BUSINESS/NEW BUSINESS:
Malabar Vernacular Ordinance
- I. ADJOURN:

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 insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service.

In compliance with the Americans With Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: April 9, 2008

Prepared By: Michele, Kelly, Secretary to P&Z

SUBJECT: Approval P&Z Minutes

BACKGROUND/HISTORY:

ATTACHMENTS:

- DRAFT Minutes from Planning and Zoning regular meeting March 26, 2008

ACTION OPTIONS:

Motion to Approve

TOWN OF MALABAR – PLANNING & ZONING ADVISORY BOARD

March 26, 2008 MEETING MINUTES

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE

Meeting called to order at 7:30 pm. Prayer and Pledge led by V-Chair Patrick Reilly

B. ROLL CALL

ROLL CALL:

Bob Wilbur, Chair

Michele Kelly, Secretary

Patrick Reilly, V-Chair

Richard Cameron -- Excused

Don Krieger

Bud Ryan

Cindy Zindel, Alt. #3 – non-voting -- Excused

C. ADDITIONS/DELETIONS/CHANGES

None

D. CONSENT AGENDA

1. Approval of Minutes

Regular Planning and Zoning Meeting – March 12, 2008

Exhibit: Agenda Report No. 1

Recommendation: Motion to approve

Motion: Kreiger / Ryan to recommend P&Z approve minutes

Kreiger noted pg 1 states "...E.A.R. motion would not be recommend to Council" should be '...would not be recommended.' And page 3, second sentence, "...being moved ahead and is being sent to another committee" should be '...sent to the REAC Committee.'

Vote: ALL Ayes

E. PUBLIC HEARING:

None

F. ACTION:

None

G. DISCUSSION ITEMS – General Items

2. Access Road Across from Foundation Park Blvd.

Wilbur was informed that the SJRWMD maps did not include this section of the Town. Wilbur requests the TOM purchase/obtain SJRWMD map of this area.

Wilbur drove to the area and did not see any wetlands but believes there may be wetlands East of Knights Of Columbus. The zoning of area under discussion is "CL" & "CG" and a road in this location would allow access to the properties without consistent commercial traffic near residential properties. Ryan asked the footage requirements for a road in this area which would ultimately be required from the properties/land opposite Foundation Park Blvd. The response was that it could be possibly up to 80 feet total, but it would depend on staff evaluation. Reilly agreed the idea is good in order to 'open the land.' Wilbur would like to propose that Council look at this for their opinion, as well as, the Town Council and Planner for direction for future discussion and/or planning.

Krieger likes the theory, however, does not believe the Town should pay for the purchase of the property or the road development. Would like to see research into an 80 foot ROW and then propose this to the four property owners whose land would be use for that ROW.

Ryan stated that it must be acknowledged that at this point Lett Ln. does not extend to the discussed potential access road. Wilbur stated that at least four (4) requests have been made to develop the area yet residences have disputed the idea. An access road would alleviate residents' traffic concerns. Also, there would be water & sewer hook-up in the area and with the current economy being down it would be a good time to begin discussing the concept.

Request that staff obtain more information from St. Johns Water Management regarding wetland status. Wilbur would like to propose that Council look at this for their opinion, as well as, the Town Council and Planner for direction for future discussion and/or planning.

Motion: Krieger / Ryan to explore the possibility and give direction to the Planning and Zoning advisory board for an appropriate mechanism to create a ROW from Babcock Street at the intersection of Foundation Park Blvd. East to the Lett Ln. ROW.

Vote: All Ayes

H. OLD BUSINESS/NEW BUSINESS:

#1

Wilbur noted that the local section of the Florida Today newspaper lists current/upcoming events; he believes it is a good idea to post P&Z agendas in the paper, especially for non-general agendas, to obtain community interest and involvement. P&Z would like to recommend other Boards' agendas be posted as well. Per newspaper clipping, there is no cost. E-mail address: eventsalendar@floridatoday.com, address: FLORIDA TODAY Date Desk, P.O. Box 419000, Melbourne, FL 32940.

Action item from Reilly is to ask the Town Administrator if it is allowable to post Town agendas.

Request that staff check on the time frame required to post.

#2

Ryan raised the issue of current 'fences' that exceed the height limitation in Malabar. Mayor Eschenberg had questions regarding the fence ordinance when a section of the 'fence' is not really a 'fence' but more of a 'gateway' or 'entryway.' He suggested possibly make changes to the fence ordinances especially if the structure is well within the owner's property and does not impede view of the road or cause a blockage of the road when the individual is pulling into one's own driveway.

Ryan believes that this can lead to future problems or issues with heights and believes that some gateways are just extensions of fences and therefore violates the ordinance. He believes that the ordinance could be reviewed, looked at, and changed but not just to accommodate those 'fences' that have already been built.

Wilbur and Reilly views these 'gateways' as acceptable with the acknowledgement that there needs to be regulations to maintain views and roads clear for safety.

Krieger stated each member of the board has a good point. Each 'special' fence case should be reviewed by P&Z.

Request that staff put fence ordinance on next agenda as a discussion item.

I. ADJOURN:

Motion: Ryan / Wilbur to adjourn at 8:40pm

Vote: All Ayes

Michele Kelly, Secretary

Bob Wilbur, Chairman

Date Approved

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: April 9, 2008

Prepared By: Bonifyn Wilbanks-Free, Town Administrator

SUBJECT: Proposal to Continue Preparation of the Town Comp Plan Amendments

BACKGROUND/HISTORY:

Calvin, Giordano and Associates, Inc. has completed their assigned work preparing the EAR for the Town and its submittal and acceptance by DCA. When the contract was drafted it allowed for additional work with an hourly rate. Ms. Tappan has prepared a proposal for the Scope of Work to complete the Comp Plan Amendments. I have also asked Ms. Tappan if they have an open contract with a governmental authority that we could piggy back on to keep us on schedule and meet our deadline requirements. She advised that they do.

Council at the RTCM of 3-17-08 directed that the proposal be reviewed by P&Z for assurance that all details would be covered to accomplish the Evaluation and Appraisal Report's recommendations.

FINANCIAL IMPACT:

FY 2007/08 is \$87,550.00

FY 2008/09 is \$14,250.00

ATTACHMENTS:

Draft Minutes from RTCM 3-17-08

Calvin Giordano Contract dated 09/17/08

Proposal dated 04/02/08

Draft Minutes from the P&Z Meeting dated 02/27/08

Letter from the DCA accepting the EAR

ACTION OPTIONS:

Staff seeks approval and authorize the proper town officials to sign the Proposal with the Calvin Giordano & Associates to complete the Comp Plan Amendments.

**EXCERPT OF DRAFT MINUTES FROM –
REGULAR TOWN COUNCIL MEETING (RTCM) OF MARCH 17, 2008:**

MISCELLANEOUS:

7. Calvin Giordano and Associates – Proposal to go forward with EAR amendments

Exhibit: Agenda Report No 7

Recommendation: Action

Mayor made his points. Where to get the money for this proposal. Council could pull it from reserves. Council has not seen a financial report in five months. Can not be fiscally responsible. Council doesn't know the effects of Amendment 1. Chair asked if any of Council had any questions about proposal itself.

Lorraine Tappen, senior planner, Calvin Giordano and Associates introduced herself. She stated the original E.A.R. was successful. DCA has found it sufficient. This is the next step. Vail understood this had to be done.

Motion: Dezman / Vail to approve to proposal.

Discussion: Dezman this item and agenda item 8 are about spending money. We don't have financials. They did speak to the amount that it would cost to implement. No one remembered. Would this delay us? Mayor asked the question. Don't make the deadline. The State would not approve any comp plan changes. Borton asked the attorney and he stated: can you put it in the next budget and then run over and ask for an extension.

BWF said staff did not know we would not have financials by now. It is common to ask DCA for extensions. Consequences of not meeting the deadline – unknown.

Lorraine Tappen stated that the deadline to complete the adoption of ordinances recommended in the E.A.R. is 18 months. BWF stated we would show good faith by starting and ask for extension after budgeting.

McKnight said he would like this to go P&Z. What exactly is the firm going to deliver in this proposal?. They would like milestones and detail on what they would get for their money. He thought the verbiage was vague. He wants the break out to be bulleted under each item and detailed with what would be included.

Dezman and Vail rescind the motion to approve and second.

BWF will ask Calvin Giordano for more detailed information in the proposal.

MOTION: Vail / McClelland Motion to table. More discussion. Vail and McClelland rescind their motion and second.

MOTION: McKnight / Vail to forward proposal to P&Z and get more details on the scope of work on the proposal. McKnight stated if it is not in the scope of work for a fixed cost project we can not ask for it to be added later without additional costs. **Vote: All Ayes.**

Lorraine Tappen also asked if P&Z could provide input on the number of public workshops in the proposal. She said they planned to have all the appropriate staff at the workshops to explain the work they were doing on each element.

The EAR report states what you are going to use as guideline to change the Comp and Land Development Code. All the components will come before P&Z. BWF will ask for more specific information.

Dezman asked if the final project cost could come in higher. It is fixed fee. They suggested two workshops in the scope and she would like feedback. It is under public participation. There are nine (9) elements in the Comp Plan that would be updated. She would like to bring team members to go over each item. The purpose of the workshops is to get feedback and is held before the public hearings. This would be more detailed than the scoping meeting.

Dezman asked about the prices. Dezman went over the fees to pay. You can ask for an extension. Deadline is Aug 2009 to adopt the recommendations in the E.A.R..

DRAFT

CONTRACT FOR PROFESSIONAL SERVICES – EVALUATION AND APPRAISAL REPORT

This Contract is made and entered into between The Town of Malabar (the TOWN), Brevard County, Florida, a municipal corporation, created and existing under the laws of the State of Florida, hereinafter referred to as the TOWN, and Calvin, Giordano & Associates, Inc. (the CONSULTANT), authorized by the Florida Department of State to conduct business in the State of Florida, hereinafter referred to as the CONSULTANT, on the date appearing on the last page hereof.

WHEREAS, the TOWN intends to proceed with an update of its Comprehensive Plan, part of the process of which is to establish a comprehensive approach to provide for the Evaluation and Appraisal Report (EAR)(hereinafter referred to as the "Project") of the TOWN, and

WHEREAS, the TOWN desires the services of a qualified professional planning consultant for the TOWN's EAR and related services; and

WHEREAS, the TOWN has duly advertised for proposals from professional consultants desiring to provide such services; and

WHEREAS, the CONSULTANT and the TOWN entered into negotiations for purposes of securing a contract for said professional planning services; and

WHEREAS, negotiations ensued between the TOWN and the CONSULTANT, and an agreement was reached for a Contract for Professional Services subject to approval by the TOWN Council.

WITNESSETH, that in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I – Definition of Understanding: This Contract defines all items of responsibility and is the only understanding between the parties. No oral understanding exists for performing the scope of work as set forth herein.

ARTICLE II – Overall Scope of Services: The Overall Scope of Services to be provided by the CONSULTANT shall include, but not be limited to preparation of the TOWN'S EAR pursuant to Chapter 163 of the Florida Statutes and 9J-5 F.A.C and as more particularly described in Exhibit "A", **Scope of Services**.

A. Dispute Avoidance and Resolution

1. The parties are fully committed to working with each other and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. If disputes do arise, the parties each commit to resolving such disputes in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Scope of Services.

2. The parties will first attempt to resolve disputes through discussions between the CONSULTANT's representative and the Town Administrator.

3. If, after meeting, the parties determine that the dispute cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator. The mediation will be governed by and conducted pursuant to a mediation contract negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

B. Litigation

1. Any claims, disputes or controversies between the parties arising out of or relating to the Contract, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section A above, may be decided by a court with proper jurisdiction.

The prevailing party in any final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorney's fees and expenses incurred by the prevailing party.

C. Duty to Continue Performance

1. Unless provided to the contrary in this contract, CONSULTANT shall continue to perform the work and the TOWN shall continue to satisfy its payment obligations to CONSULTANT, pending the final resolution of any dispute between them.

ARTICLE III – Work Authorization Change Order: The Scope of Services may be modified from time to time to provide for additional services, deletions of service, or redefinitions of services, for specific work assignments, as deemed necessary by the TOWN. All such modifications as to services, schedules, and fees for Work Authorizations shall be subject to negotiation between the TOWN and the CONSULTANT and approval by the TOWN Council.

The **Scope of Services** to be provided by the CONSULTANT under Work Authorizations of this Contract shall be clearly described and attached as Exhibit "B", **Work Authorization Change Order**.

ARTICLE IV – THE TOWN'S Responsibilities: The TOWN agrees to make available for review and use by the CONSULTANT, reports, studies, and data relating to the Project.

ARTICLE V – Compensation: Compensation for the specific task assignments are identified and defined in the **Scope of Services**, and represent the total compensation for all services, equipment and work products to be provided by the CONSULTANT authorized by this Contract.

Lump Sum:

The Lump Sum fee constitutes a total cost for the services in individual scopes of work negotiated prior to the start of the CONSULTANT'S services, including reimbursable expenses associated with the work. Lump Sum fees shall be based upon an identifiable scope of work. Prior to finalizing the negotiation of a Lump Sum fee, the CONSULTANT shall provide the TOWN with a detailed breakdown of man-hours by task and discipline used

in preparing the proposed Lump Sum. The Lump Sum fee for this contract is \$42,970.00, plus expenses in the amount of \$4,297.00.

Actual Cost:

Actual Cost shall be based upon actual hourly wages paid to the CONSULTANT'S professionals for services rendered by employees assigned to the Project. THE CONSULTANT agrees that the hourly rates used to determine rate charges for the employees rendering services to the TOWN pursuant to the Contract shall not exceed the maximum rates as shown in the Schedule attached hereto as Exhibit "C" throughout the duration of the work authorizations. The maximum rates listed in the Schedule shown in Exhibit "C" may be modified to compensate for the CONSULTANT'S salary adjustments for subsequently authorized Work as approved by the TOWN Council.

Sub-Consultants:

The cost of services and reimbursable expenses for sub-consultants required for a Project and employed by the CONSULTANT shall be negotiated as an element of the Lump Sum fee for the Project. All sub-consultants proposed for use shall be named as the CONSULTANT at the time the Lump Sum fee is negotiated. No other special sub-consultants shall be used on a Project unless and until approved by the TOWN Council of the TOWN. Nothing contained herein shall be deemed to preclude the TOWN from contracting for the services of special sub-consultants directly with the provider of such services.

When sub-consultants are engaged for an Actual Cost, the CONSULTANT will invoice the TOWN for the work provided by the sub-consultant at the actual fee amount invoiced by the sub-consultant.

ARTICLE VI – Method of Payment: The CONSULTANT shall invoice the TOWN upon satisfactory conclusion of each Task identified in Exhibit A and such invoices shall contain a Progress Certification Statement. The statement shall state that the Task is completed to the satisfaction of the Town Administrator.

All invoices submitted by the CONSULTANT and approved by the TOWN shall be due and payable within 30 calendar days after such approval. The TOWN agrees not to unreasonably withhold its approval of invoices submitted in compliance with the terms of this Contract. Interest on unpaid invoices shall accrue at the rate of ten percent (10%) per annum.

The method of payment for services provided as part of future Work Elements of this Contract shall be negotiated to the satisfaction of both parties, with final authorization being subject to TOWN approval.

ARTICLE VII – Termination: It is agreed by and between each of the parties hereto, respectively, that each of the parties shall have, and there is hereby reserved to such parties and each of them, the right to cancel and annul this Contract upon 30 days written notice to the other party.

Further, it is covenanted and agreed by and between the parties hereto, and each of them, respectively, that upon the expiration of such 30-day period from the notice of cancellation by either party, as herein provided, this Contract shall cease, and thereafter each of the parties shall be released from further liability under the terms hereof.

It is further covenanted and agreed by and between the parties hereto, that in case or in the event this Contract shall be canceled as herein provided, the TOWN will pay unto the CONSULTANT all amounts due under the terms hereof that can be justified to the TOWN as of date of cancellation. The CONSULTANT agrees that upon receipt of justified portion of fee, all documents will immediately be transmitted to the TOWN for the TOWN'S use in accordance with the terms of this Contract.

ARTICLE VIII – Ownership of Documents: All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed during the term of and in accordance with the provisions of this Contract, shall be the property of the TOWN and delivered to the TOWN upon demand, provided the payment of fees has been received by the CONSULTANT in accordance with the terms of this Contract.

ARTICLE IX – Reuse of Documents: THE TOWN agrees to hold harmless and indemnify the CONSULTANT from and against any claims, demands, actions or causes of actions as a result of the TOWN'S reuse of documents and drawings or other work products.

ARTICLE X – Nondiscrimination: The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin.

The CONSULTANT agrees to comply with all local, state and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, the CONSULTANT agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended and applicable executive orders including, but not limited to, Executive Order No. 11246.

ARTICLE XI – Contingency Fee: The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

ARTICLE XII – Indemnification: THE CONSULTANT shall indemnify and hold harmless the TOWN, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the contract.

ARTICLE XIII – Insurance: The CONSULTANT shall purchase and maintain, at its own expense, the following types and amounts of insurance, in form and from companies satisfactory to the TOWN:

1. **Workers' Compensation Insurance:** As required by Florida Statutes, Chapter 440, Workers Compensation Insurance, for all employees of the CONSULTANT, employed at the site of work or in any way connected with the work, which is the subject of this service. The insurance required by this provision shall comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.
2. **Liability Insurance:** Comprehensive General Liability Insurance, including coverage for operations, independent contractors, products-completed operations, broad form property damage, and personal injury on an "occurrence" basis insuring the CONSULTANT and any other interests, including but not limited to any associated or subsidiary companies involved in the work. Automobile Liability Insurance which shall insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONSULTANT at the site of the Project or in any way connected with the work which is the subject of this contract. The Liability Insurance shall name the TOWN as an additional insured.

The limit of liability shall be a combined single limit for bodily injury and property damage of no less than \$1,000,000. If insurance is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$1,000,000.

3. **Professional Liability Insurance:** Professional Liability Insurance insuring the CONSULTANT and other interest, including, but not limited to, any associated or subsidiary companies involved in the work, for errors and omissions in the performance of professional services to be rendered pursuant to this Contract. The limit of liability of Professional Liability Insurance shall be no less than \$1,000,000.

Any insurance policy required by Article XIII, Section 3 hereof, may contain a reasonable deductible provision provided advance notice of said deductible provision is given by the CONSULTANT to the TOWN and approval from the TOWN is given, which approval shall not be unreasonably withheld or delayed.

The CONSULTANT shall furnish proof of insurance acceptable to the City prior to or at the time of execution of the contract and the CONSULTANT shall not commence work under this contract until it has obtained all the insurance required under this contract and such insurance has been filed with and is approved by the TOWN, nor shall the CONSULTANT allow any sub-contractor to commence work on its subcontractor until similar insurance required of the sub-contractor has been so obtained and approved.

The CONSULTANT shall furnish evidence of all required insurance in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates, and shall contain the following language as to cancellation: "In the event of cancellation of policy by the insurer or any insured, the company shall give not less than 30 days advance written notice to The Town Administrator, The Town of Malabar, 2725 Malabar Road, Malabar, FL 32950". If requested by the TOWN, the CONSULTANT will furnish copies of the insurance

contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the TOWN.

The CONSULTANT shall file replacement certificates 30 days prior to expiration of termination of the required insurance occurring prior to the acceptance of the work by the TOWN. In the event such insurance shall lapse, the TOWN expressly reserves the right to renew the insurance at the CONSULTANT'S expense.

The CONSULTANT may not cancel the insurance required by this contract until the work is completed, accepted by the TOWN, and the CONSULTANT has received written notification from the Town Administrator of the TOWN that the CONSULTANT may cancel the insurance required by this contract and the date upon which the insurance may be canceled. The Town Administrator of the TOWN will provide written notification at the request of the CONSULTANT if the request is made no earlier than 2 weeks before the work is to be completed.

ARTICLE XIV – Truth in Negotiations Certificate: The CONSULTANT hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

ARTICLE XV – Third Parties: Nothing contained in this contract shall create a contractual relationship with a cause of action in favor of a third party against either the TOWN or the CONSULTANT. The CONSULTANT'S services under this contract are being performed solely for the TOWN'S benefit and no other entity shall have any claim against the CONSULTANT because of this contract or the performance or non-performance of services hereunder.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed in triplicate original and effective this _____ of _____, 2007.

WITNESSES

Bonnie Wilbanks-Free
Cynthia D. Kelley
Sharon White

THE TOWN OF MALABAR

By: Thomas Schubert
Name of official signing
Attest: Cynthia D. Kelley
Name

WITNESSES

SH Belle
Matt

CALVIN, GIORDANO & ASSOCIATES, INC.

By: Shelley Eichner
Name of person signing
Attest: Shelley Eichner


Notary Public
2/22/09
Commission Expires



EXHIBIT A

Article 1. Scope of Services

~~This is a scope of work for consultant services necessary to complete the Town of Malabar Evaluation and Appraisal Report (EAR) which must be transmitted to the Florida Department of Community Affairs (DCA) no later than January 1, 2008.~~

Consultant tasks:

1. By September 30, 2007, organize and facilitate an EAR scoping meeting open to the public with local and other government officials who would have an interest in the Town of Malabar EAR (e.g., city managers, local and regional planners, affected state agencies).
2. By October 15, 2007, develop a major issues list and prepare a letter to DCA requesting a "memorandum of understanding."
3. By November 1, 2007, prepare a first draft of the EAR for Staff review. In addition to addressing the major issues, this task will include:
 - a. Population growth and changes in land area since the plan's most recent amendments

- b. Extent of vacant and developable land
- c. Financial feasibility of implementing the comprehensive plan and ability to maintain adopted levels-of-service through the capital improvement element.
- d. Location of existing development in relation to the location of development as anticipated in the original plan.
- e. Identification of major issues
- f. Relevant changes to the state comprehensive plan, Chapter 9J-5, Florida Administrative Code, and the strategic regional policy plan since the most recent comprehensive plan amendments.
- g. Assessment of plan objectives as they relate to major issues
- h. A brief assessment of successes and shortcomings related to each element of the plan.
- i. Identification of actions or corrective measure to address the major issues identified and analyzed in the report.
- j. Summary of public participation undertaken by the local government.
- k. Coordination of the comprehensive plan with existing public schools.
- l. The extent to which the local government has been successful in identifying alternative water supply projects and traditional water supply projects.
- m. An evaluation of whether any past reduction in land use density impairs the property rights of current residents when redevelopment occurs including redevelopment after a disaster.
- n. An assessment of the extent to which changes are needed to develop a common methodology for measuring impacts on transportation facilities for purpose of implementing its concurrency management system.

****These requirements will include evaluation of legislative changes due to SB 360 and new SB360 requirements for Evaluation and Appraisal Reports.***

- 4. By December 1st, revise the EAR based upon Town staff comments.
- 5. Between December 1st and December 31st, conduct a public hearing with the Local Planning Agency (LPA) on whether to transmit the proposed EAR to DCA.
- 6. Between December 1st and December 31st, conduct a public hearing with the Town Council on adoption of the EAR.
- 7. By January 31, 2008 turn over all documents to the Town.

Project Schedule						
EAR TASK	August	September	October	November	December	January

A. Project Kick-Off						
Data needs list	X	X				
Kick-off meeting		X				
Public Involvement Plan		X				
B. Major Issues						
Workshop preparation		X				
Workshop		X				
Letter of understanding			X			
C. Data Collection August-November						
D. Analysis						
Analysis		X	X			
Technical memos				X		
Team meeting		X				
E. Recommendations						
F. Documentation						
Prepare draft EAR	August-November					
Team meeting As needed.						
Scoping Meeting		X				
P&Z/LPA meeting					X	
Council meeting					X	
EAR transmittal					X	
Turn over documents				X	X	

EXHIBIT B
WORK AUTHORIZATION CHANGE ORDER NUMBER 1
Town of Malabar Continuing Planning Services
CALVIN, GIORDANO & ASSOCIATES, INC.

Date: _____

Pursuant to the Town of Malabar, Florida, Agreement for Continuing Planning Services entered into and between the Town of Malabar, hereinafter referred to as the "TOWN" and Calvin, Giordano & Associates Inc., hereinafter referred to as the "CONSULTANT", a determination has been made by the TOWN that there is a need for the performance of/or rendering of services by the CONSULTANT of a certain "Work Assignment" under the purview of said Agreement, and CONSULTANT is hereby authorized to perform or render the particular services of work described as follows:

TITLE OF PROJECT: Town of Malabar, EAR

PHASES AND/OR TASKS OF CONSULTING SERVICES AUTHORIZED: CONSULTANT shall perform tasks as more specifically detailed below:

Task #	Task Assignment	Lump Sum Fee	Hourly Fee
		--	See discussion and attached rate schedule
TOTAL FEE			

Task Description:

Consultant Staff shall include the following cost breakdown:

Task #	Position	Hourly Rate	Meeting time (in hours)	Fee
Total Cost of Task #				

Compensation to the CONSULTANT for rendering all of the above identified services and products shall not exceed \$_____ per hourly rates plus expenses.

Calvin, Giordano & Associates, Inc.

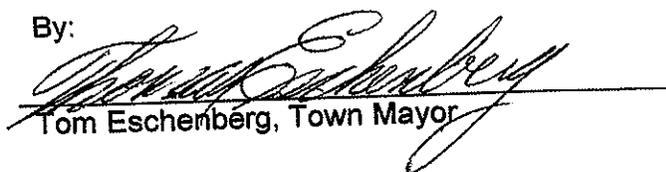
Witness:

By:

Date:

Recommended by the Town of Malabar

By:



Tom Eschenberg, Town Mayor



Calvin, Giordano & Associates, Inc.
EXCEPTIONAL SOLUTIONS

Bonilyn Wilbanks-Free
Town Manager
Town of Malabar
2725 Malabar Road
Malabar, Florida 32950-4427

April 2, 2008

RE: Proposal for EAR-based Amendments

Dear Ms. Wilbanks-Free:

We are pleased to submit this proposal for Professional Services on the above referenced project for the Town of Malabar. The following is a revised proposal providing a more detailed scope as requested by the Town Council.

SCOPE OF SERVICES

Calvin, Giordano & Associates, Inc. will perform the following services based on our understanding of the project requirements:

TASK 1: DATA AND ANALYSIS

A large portion of the EAR-based amendments will entail revising the Data, Inventory and Analysis of Comprehensive Plan Elements. The Consultant will gather and analyze existing information from Brevard County, USGS, St. John's River Water Management District, FEMA, Florida Fish and Wildlife Conservation Commission, Shimberg Institute (University of Florida), Brevard County Property Appraiser, Florida Department of Transportation, Florida Department of Environmental Protection, Florida Department of State, East Central Florida Regional Planning Council, City of Palm Bay, U.S. Department of Agriculture, and other public and private service providers according to the requirements of Chapter 163 of the Florida Statutes and Rule 9J-5 of the Florida Administrative Code.

The following data will be provided with the EAR-based Amendments:

A. Land Use Element

- 1) Planning Timeframes
- 2) Existing Land Use Conditions/Total acreages
- 3) Future Land Use Designations/Total acreages
- 4) Population and Population Projections
- 5) Analysis of Land Needed to Accommodate Population

Engineering
Construction Engineering
& Inspection
Municipal Engineering
Transportation Planning
& Traffic Engineering
Surveying & Mapping
Planning
Landscape Architecture
& Environmental Services
Construction Services
Indoor Air Quality
Data Technologies
& Development

1870 W. Palmetto Drive, Suite 600
Fort Lauderdale, FL 33316
Phone: 954.921.7781
Fax: 954.921.8807
www.calvin-giordano.com

- 7) Facilities Analysis of Transportation, Potable Water, Sewer, Drainage, Parks and Recreation, and Public Schools
- 8) Historic Preservation and analysis of Master Site File Data
- 9) Land Cover analysis including Natural Habitats, Water Resources, Wellfield Protection, and Soils
- 10) Topography and Flood Zones
- 11) Hazard Mitigation
- 12) Analysis of Need for Redevelopment

B. Transportation

- 1) Existing Transportation Systems and Transportation Needs Analysis
- 2) Existing Roadway Levels of Service
- 3) Existing Public Transit Facilities
- 4) Transportation Disadvantaged Program
- 5) Roadway Analysis
- 6) Future Transportation System (2030)
- 7) Future Transportation Needs Analysis
- 8) Future Roadway Levels of Service
- 9) Future Pedestrian and Bicycle Plan
- 10) Future Roadway Condition Analysis

C. Housing

- 1) Housing and Residential Development
- 2) Household Characteristics
- 3) Household Income Characteristics and Groups
- 4) Housing and Living Conditions
- 5) External Housing Conditions
- 6) Assisted Housing
- 7) Group Facilities and Homes
- 8) Mobile Home and Recreational Vehicle Parks
- 9) Neighborhood Redevelopment and Urban Infill
- 10) Historic Preservation
- 11) Housing Analysis
- 12) Housing Projections
- 13) Household Characteristics Projections
- 14) Housing Delivery Process
- 15) Alternative Housing Issues
- 16) Availability of Services
- 17) Affordable Housing Assessment
- 18) Affordable Housing Demand

D. Public Facilities Element

- 1) Sanitary Sewer
 - a. Geographic Service Areas
 - b. Capacity Analysis and Level of Service Analysis
 - c. Septic Tank usage and Compatibility

- d. Impact on Natural Resources
- 2) Solid Waste
 - a. Geographic Service Area
 - b. Capacity and Level of Service Analysis
 - c. Impact on Natural Resources
- 3) Potable Water Analysis
 - a. Geographic Service Area
 - b. Capacity Analysis and Level of Service Analysis
 - c. Private Wells
- 4) Drainage
 - a. Design Capacity Analysis
 - b. Level of Service Analysis
 - c. Management Master Plan
 - d. Impact on Natural Resources
- 5) Natural Groundwater Aquifer Recharge

E. Coastal Management

- 1) Coastal Planning Area Existing and Future Land Uses
- 2) Coastal Planning Community Redevelopment
- 3) Natural Resources
- 4) Public Access Facilities
- 5) Estuarine Pollution Conditions
- 6) Historic Resources
- 7) Infrastructure in the Coastal Area
- 8) Coastal High Hazard
- 9) Infrastructure in the Coastal High Hazard Area
- 10) Natural Disaster Planning

F. Conservation

- 1) Natural Environment
 - a. Climate
 - b. Air Quality
 - c. Soils and Soil Erosion
 - d. Water Resources
- 2) Commercially Valuable Minerals
- 2) Floodplains
- 3) Land Cover and Natural Habitats
- 4) Conservation Areas and Conservation Opportunities
- 5) Potable Water and Groundwater Quality
- 6) Appendices
 - a. Natural Plant Species
 - b. Listed Animal Species
 - c. Invasive Plant List

G. Recreation and Open Space

- 1) Classification of Public Recreation and Open Space Facilities

- 2) Inventory of Existing Recreation and Open Space Facilities
- 3) Recreation and Open Space Level of Service Analysis

H. Intergovernmental Coordination

- 1) Inventory and Evaluation of Existing Coordination Mechanisms
- 2) Joint Planning Areas
- 3) Coordination Issues by Element

I. Capital Improvements

- 1) Public Facility Needs
- 2) Public Education and Health System
- 3) Revenue Funding Sources
 - a. Municipal Sources
 - b. State Sources
 - c. Federal Sources
- 4) Projected Revenues
- 5) Debt Capacity and Obligations
- 6) Monitoring and Evaluation
- 7) Concurrency Management
- 8) Schedule of Capital Improvements

TASK 2: MAPPING

Original GIS-based maps will be created for the EAR-based Comprehensive Plan Amendments. Maps required for the Goals, Objectives, and Policies, and Data Inventory and Analysis will be created in GIS based upon data from the Town of Malabar, Brevard County, Brevard MPO, St. John’s River Water Management District, FEMA, USGS, U.S. Department of Agriculture as well as other related public agencies.

Maps in the EAR-Based Amendments will include the following:

- Existing Land Uses (Within Town Boundary)
- Existing Land Uses (Including Adjacent Land Uses)
- Vacant Land with Future Land Use
- Habitat and Land Cover
- Conservation Areas
- USGS 1:24,000 Hydrography
- Wellhead Protection Areas
- USDA Soils Classification
- Future Land Use
- Existing Roadway System
- Existing Roadway Level of Service
- Future Roadway System
- 2030 Roadway LOS
- Future Evacuation Routes

Sewer Collection System
Water Distribution System
FEMA Flood Zones
Topography
Recreation and Open Space Areas
Coastal High Hazard Area
Hurricane Evacuation Routes and Closest Shelters

TASK 3: GOALS, OBJECTIVES, AND POLICIES

Amend Goals, Objectives, and Policies based upon the Evaluation and Appraisal Report (EAR), the current Town vision and include the following:

- Update level of service (LOS) standards as necessary for public facilities
- Ensure requirements of Chapter 163, Florida Statutes, and 9J-5, Florida Administrative Code regarding Comprehensive Plans
- Incorporate policies that protect Malabar's small town atmosphere including Low Impact Development techniques, enhancing Indian River Lagoon and historic mailboat features, and appropriate transportation policies for Malabar's unique rural atmosphere
- Reflect themes of the *How Shall We Grow? Project* and the East Central Florida Regional Planning Council

The Goals, Objectives and Policies of the following elements will be reviewed:

- A. Land Use
- B. Transportation
- C. Housing
- D. Public Facilities
- E. Coastal Management
- F. Conservation
- G. Recreation and Open Space
- H. Intergovernmental Coordination
- I. Capital Improvements

TASK 4: PUBLIC PARTICIPATION

The draft amendments will be presented in two workshops to allow review of the Data Inventory and Analysis and Goals, Objectives, and Policies of the Comprehensive Plan Elements by the public, Planning and Zoning Advisory Board, and Town Council.

EAR-based Amendments Workshop #1:

Land Use
Housing
Conservation
Recreation and Open Space
Coastal Management

EAR-based Amendments Workshop #2

Transportation
Public Facilities
Intergovernmental Coordination
Capital Improvements

The draft amendments will be revised based upon the comments received at the Workshops.

TASK 5: PLAN ADOPTION

The Consultant will guide the EAR-based Amendments through state-mandated public hearings and adoption of the amendments. The adoption process will include:

- Presentation of the draft EAR-based Comprehensive Plan Amendments to the Planning and Zoning Advisory Board for recommendation to the Town Council.
- Presentation of the draft EAR-based Comprehensive Plan Amendments to the Town Council to consider transmittal to the Department of Community Affairs and reviewing agencies.
- Revise Comprehensive Plan based upon the Department of Community Affairs Objections, Recommendation, and Comments (ORC) Report.
- Present the revised Comprehensive Plan to the Town Council for final adoption.

SCHEDULE

Task 1: Data and Analysis	May-July 2008
Task 2: Mapping	May-July 2008
Task 3: Goals, Objectives and Policies	July-August 2008
Task 4: Public Participation	October 2008
Task 5: Plan Adoption	December-March 2009

BASIS OF COMPENSATION:

Hourly rates with an estimated fee of \$101,800 plus reimbursables at \$5,090. -- with a total not to exceed amount of \$106,890. Tasks 1 and 2 shall be paid in FY08 and the remaining tasks may be paid in FY09. Additional public workshops may be requested at \$4,000 per workshop.

TOWN OF MALABAR

TITLE	RATE	HOURS	COST
PRINCIPAL	\$210.00	30	\$15,600.00
PLANNING ADMINISTRATOR	\$130.00	120	\$6,300.00
PROJECT MANAGER	\$140.00	100	\$14,000.00
PLANNER	\$100.00	170	\$13,500.00
CLERICAL	\$70.00	40	\$2,800.00
ENVIRONMENTAL ADMINISTRATOR	\$120.00	80	\$9,600.00
DIRECTOR, ENGINEERING	\$160.00	50	\$8,000.00
ENGINEER	\$100.00	80	\$8,000.00
TRAFFIC TECHNICIAN	\$85.00	80	\$6,800.00
GIS COORDINATOR	\$140.00	20	\$2,800.00
GIS SPECIALIST	\$120.00	120	\$14,400.00

LABOR SUBTOTAL	
REIMBURSABLE SUBTOTAL	\$101,800.00
TOTAL	\$5,090.00
	\$106,890.00

LABOR SUBTOTAL BY TASK

Task 1: Data and Analysis	May-July 2008	45,758
Task 2: Mapping	May-July 2008	12,000
Task 3: Goals, Objectives and Policies	July- August 2008	21,792
Task 4: Public Participation	October 2008	8,000
Task 5: Plan Adoption	December-March 2009	14,250
Labor Subtotal		101,800

We look forward to working with the Town on its EAR-based amendments to ensure the Comprehensive Plan reflects the Town's vision and state requirements.

Yours truly,



Shelley Eichner
Vice President

Zindel inquired if someone could asked for a zoning change or anything like that at a P&Z meeting and raise the question. Franklin explained that the suggestion has been made at other times. However, the Board state they need to be careful when offering advice.



Wilbur questioned Franklin regarding the statement in the memo (08-TC-012, para 1), regarding the E.A.R. review completed by DCA. Wilbur asked about the next step in putting an amendment into place and wanted to know if we are going to use the same Planners? Franklin stated that we are hoping we will not have to re-bid.

Chair Wilbur asked Mayor Eschenberg as to why the Council deliberately separated the E.A.R. from the amendments and Mayor stated he was not sure. Further discussion was held regarding the timeline and the costs.

I. ADJOURN:

Motion: Reilly / Krieger to adjourn. **Vote: All Ayes.** Meeting adjourned at 9:30PM

Michele Kelly, Secretary

Bob Wilbur, Chairman

Date approved

DRAFT



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

February 29, 2008

The Honorable Thomas Eschenberg
Mayor, Town of Malabar
2725 Malabar Road
Malabar, Florida 32922

RE: The Town of Malabar Adopted Evaluation and Appraisal Report
Resolution 31-2007

Dear Mayor Eschenberg:

I am pleased to inform you that the Department has completed its review of the adopted Evaluation and Appraisal Report (EAR) for the Town of Malabar, adopted on December 17, 2007 and has determined that the EAR is sufficient, as defined in Subsection 163.3191(6), Florida Statutes. The Town may proceed with the adoption of plan amendments in addition to EAR-based amendments.

Please note that a formal final sufficiency determination does not constitute a compliance review of the proposed amendments identified in the Report. Amendments referenced in the Report will be reviewed for consistency with Chapter 163, Part II, Florida Statutes and Rule 9J-5, Florida Administrative Code, when submitted as proposed amendments.

Department staff is available to provide any needed assistance to the Town as it prepares the EAR-based amendments. If you have any questions, please do not hesitate to call Jon Frederick, Planner at 850-922-1807.

Sincerely,

Mike McDaniel, Chief
Office of Comprehensive Planning

MM/jf

cc: Mr. Phil Laurien, Executive Director, East Central Florida Regional Planning Council
Ms. Bonilyn Wilbanks-Free, Town Administrator, Town of Malabar
Ms. Lorraine Tappen, Senior Planner, Calvin-Giordano and Associates

2555 SHUMARD OAK BOULEVARD TALLAHASSEE, FL 32399-2100
Phone: 850-488-8466/SUNCOM 278-8466 Fax: 850-921-0781/SUNCOM 291-0781
Website: www.dca.state.fl.us

COMMUNITY PLANNING
Phone: 850-488-2356/SUNCOM 278-2356
Fax: 850-488-3309/SUNCOM 278-3309

AREAS OF CRITICAL STATE CONCERN FIELD OFFICE
Phone: 305-289-2402
Fax: 305-289-2442

HOUSING AND COMMUNITY DEVELOPMENT
Phone: 850-488-7956/SUNCOM 278-7956
Fax: 850-922-5623/SUNCOM 292-5623

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 3

Meeting Date: April 9, 2008

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

SUBJECT: Request For Exception To Fence Height in RR-65

BACKGROUND/HISTORY:

This applicant starting to build a fence/wall along the front of their property last August and was cited for working without a permit. They submitted a request to P&Z on September 12, 2007 for an favorable recommendation for fence columns and a gate higher than the 54" allowed in RR-65 zoning. P&Z could not act on this because the columns exceeded six (6') feet. They were referred to Board of Adjustment. Applicant submitted to BOA and upon review by the Town Attorney, it was determined that the request was not within their jurisdiction. Town Council had given the authority to approve fence heights to themselves and only up to six (6') feet. The applicant was told to either remove the fence or re-submit the permit showing it would only be built to six (6') foot in height.

The applicant has chosen to resubmit revised drawings showing the fence, columns, and gate will not exceed six (6') feet in height.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

- Revised Application and Drawing
- Article V, Section 1-5.8.e.5
- P&Z minutes from 9-12-07
- Picture of construction

ACTION OPTIONS:

Staff seeks recommendation to Council concerning this matter.



2725 Malabar Road, Malabar, Florida 32950
(321) 727-7764 - 14 Telephone (321) 727-9997 - FAX

**BUILDING PERMIT APPLICATION
GENERAL PURPOSES**
Tax folio # Permit #

Please check the appropriate box for the project you are proposing. If it is not listed, it may require a different type of permit* (i.e., Culvert/Land Clearing/Land Filling, Driveway, Accessory Structures, Ponds, Pools/Hot Tubs/Spas, Tree Removal, Roads, etc.). See Building Department personnel.

<input type="checkbox"/>	A/C-Mechanical Change-out	<input type="checkbox"/>	Fire Suppression	<input type="checkbox"/>	Re-Roof, # of sq, pitch, type
<input type="checkbox"/>	Demolition	<input type="checkbox"/>	Irrigation	<input type="checkbox"/>	Generator
<input type="checkbox"/>	Dock	<input type="checkbox"/>	Mobile Home Set-up	<input type="checkbox"/>	Sign
<input type="checkbox"/>	Electrical inc. Amps	<input type="checkbox"/>	Patio Slab	<input type="checkbox"/>	Solar Energy
<input type="checkbox"/>	Fence	<input type="checkbox"/>	Plumbing inc. fixtures	<input type="checkbox"/>	Tent
<input checked="" type="checkbox"/>	Other: FENCE & GATE				

LEGAL DESCRIPTION:

Township: _____ Range: _____ Section: _____ Sub #: _____ Block/Parcel: _____ Lot: _____
Subdivision Name: _____ Plat: Book/Page: _____

OWNER INFORMATION:

Name: Shondawn Roberts Phone: 733-0312 / 591-1770 (cell)
Address: 1890 Eva Lane FAX: 733-0312

FEE SIMPLE TITLEHOLDER (IF OTHER THAN OWNER):

Name: _____ Phone: _____
Address: _____ FAX: _____

BONDING COMPANY:

Name: _____ Phone: _____
Address: _____ FAX: _____

MORTGAGE LENDER:

Name: _____ Phone: _____
Address: _____ FAX: _____

ARCHITECT/ENGINEER:

Name: _____ Phone: _____
Address: _____ FAX: _____

DESCRIPTION OF WORK - be very specific:

security block wall 6' tall per DWG. Value of Const 3500.00

CONTRACTOR INFORMATION (attach copies):

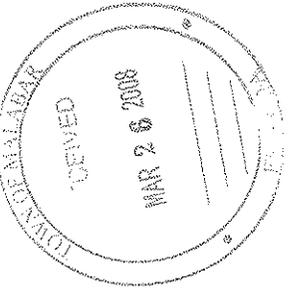
Company Name: owner / builder Phone: _____
Qualifier's Name: _____ FAX: _____
Address: _____ Gen Liab Ins exp _____
State Certification #: _____ Cert of Com#: _____ W/C Ins or Exemp # _____

Occupancy Group: _____ Const Type: _____ Floor Area: _____

Must comply with 2004 FBC with 2006 Supplement.

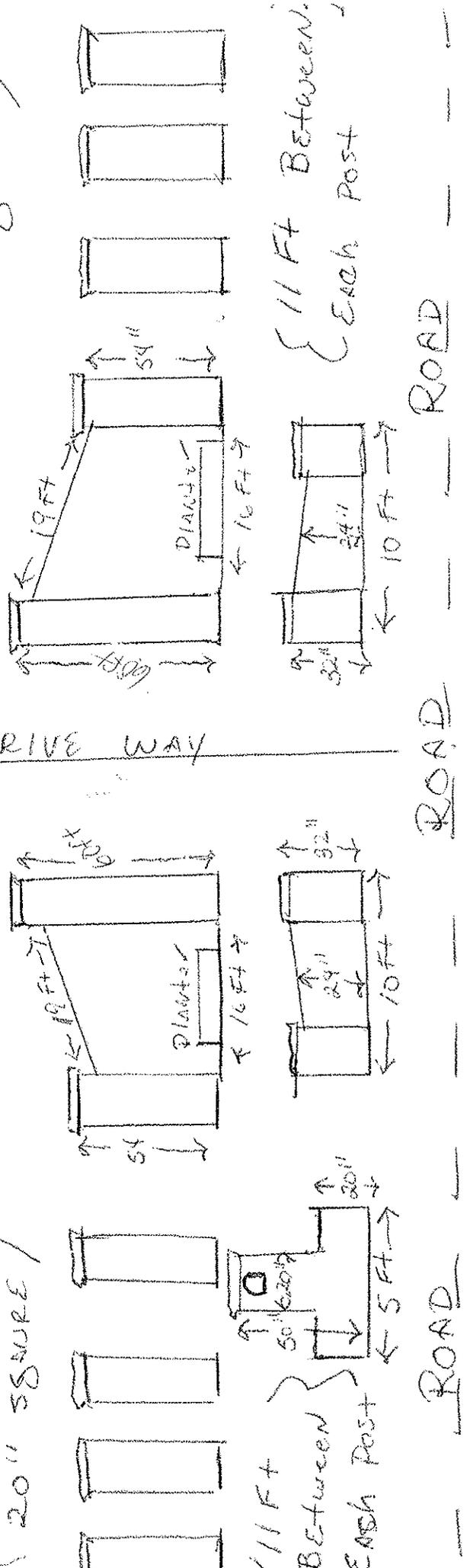
Shondalyn Roberts
1890 Eva Lane

(All Post ARE 20" SQUARE)
All set in footer's
Reinforce with Re-bar



{ 8 columns
ON RIGHT
54" TALL
20" SQUARE }

{ 4 columns
ON LEFT
54" TALL
20" SQUARE }



{ All Post covered in stone }
WALLS Block covered in stucco

3. For any corner lot of which the rear lot line abuts the side lot line of another lot, that portion of such fence or wall located between the side right-of-way line and the side building line adjacent to the side right-of-way shall be not more than four (4) feet in height.
4. For any lot or parcel not containing a structure, the requirements of subsection (e)1, (2) and (3) shall be applied to required front and corner building lines in the same manner as if a structure had been constructed in accordance with such required yard area or setback as specified within the zoning district requirements.
5. Any lot or parcel located within a RR-65 District shall be permitted a fence or wall fifty-four (54) inches or less in height within the required front yard. Higher fences and walls, not to exceed six (6) feet in height within the required front yard may be authorized by the Town Council after considering the recommendation of the Planning and Zoning Board. Prior to approving subject structure the Town Council shall render a finding that the structure is safe and visually compatible in the area. Such fence or wall shall be constructed in a manner that provides adequate visibility at any public or private right-of-way, driveway or street providing access to such lot or parcel, and at any abutting intersection.

(f) Height restrictions for fences or walls in commercial, industrial and institutional districts. Fences or walls located, erected, constructed, reconstructed or altered on any property located in a commercial, industrial and institutional district shall comply with the following height requirements:

1. Commercial district shall be no more than six (6) feet in height. An additional twelve-inch section for security with barbed wire attached may be permitted, total height shall not exceed seven (7) feet in height.
2. Industrial and institutional districts shall be no more than eight (8) feet in height including barbed wire for security.

(g) Maintenance of fences and walls. All fences or walls in the Town shall be maintained in good repair and in a structurally sound condition. All fences shall be upright and plumb continuous in alignment.

(h) Restriction of fences or walls on public easements, utility easements and public rights-of-way.

1. No wall shall be constructed on any public easement, utility easement or public right-of-way.
2. No fence shall be constructed on any public right-of-way, and except as provided in subsection (3) hereof, no fence shall be constructed on any easement.

TOWN OF MALABAR – PLANNING & ZONING ADVISORY BOARD

9/12/07 MEETING MINUTES

ROLL CALL:

Bob Wilbur, Chair

Richard Cameron

Patrick Reilly, V-Chair

Don Krieger

Bud Ryan

Cindy Zindel, Alt. #2, excused until October, 2007

Bill Stephenson, Town Eng, excused

Debby Franklin, Secretary

Keith Mills, Town Planner, excused

Mayor/Council Chair Tom Eschenberg was in attendance. Resident Juliana Hirsch was present in the audience.

Meeting called to order at 7:45PM (due to technical difficulties with the power point equipment.) Prayer and Pledge led by Chair Bob Wilbur.

ROLL CALL OF MEMBERS – see above.

ADDITIONS AND DELETIONS: none

MINUTES FROM AUGUST 22, 2007 ADVISORY BOARD MEETING:

MOTION: Reilly / Ryan to approve minutes of August 22, 2007 with following corrections:

On page 3, typo in first line of third paragraph: change bracket to dash

Vote: All Aye.

E. PUBLIC – other than on the agenda - none

F. ACTION ITEMS:

2. Recommend Town Council approval for Fence and Gate Columns higher than 54", RR-65 zoning, 1890 Eva Lane, applicant Shondalyn Roberts

Reilly asked secretary how issue was brought up. Town received a call from a citizen that work was going on without a permit. Building Department checked it out, sent letter and property owner came right in a filed the necessary documents. They have cooperated fully with the Building Department.

Applicants not present.

One speaker card. Juliana Hirsch, 1035 Malabar Road, is confused – is Board talking about the columns or the wall that is encroaching into the tight-of-way? The column height is what this Board has the authority to review and recommend. Hirsch is against spot approvals. Hirsch also asked secretary about the property several house to the north of the applicant's that just put in a seven foot high beautiful metal gate within the last two weeks. She thinks the code should be changed to allow it. She is against people who are contractors saying they don't know they have to pull permits. These people are contractors. There is a reason they didn't come in for a permit – they wouldn't have gotten a permit with that height. The neighbor's to the

north with the new gate wouldn't have gotten a permit without a special exception. She doesn't think people should have to get special exceptions if it is just a inch or two higher. She thanked Board

Reilly responded: RR-65 zoning allows fences up to 54"- and up to 6' after consideration by this Board and approval by Council. There is no authority to consider fences higher than 6 feet. They should have come to Town Hall to get a fence permit. He disclosed that he drove by the property this date and saw the fence and columns and they are definitely higher that 54" and the columns exceed 6' and so this Board doesn't have authority to recommend approval. He also noted that there was a new gate at 1780 Eva Lane without a permit. Why didn't the citizen also turn this one in?

Ryan stated that rules are the rules and if the columns are higher than six feet then they should need to go to the Board of Adjustment.

MOTION: Reilly / Ryan to recommend Council deny the request for height exception for Shondalyn Roberts, 1890 Eva Lane, Malabar for the following reasons:

1. Town Code clearly states 54" maximum height and exception to six feet only
2. They are asking for greater than the 6' exception
3. The Council in 1999 that wrote the Fence Ordinance spent many months working on the ordinance and had several town hall meetings.
4. It would be an injustice to fellow RR-65 Malabar residents to allow greater than six feet
5. P&Z and Council have previously only approved up to 6' in height. We don't want to set a precedent.

Vote: All Aye

G. DISCUSSION ITEMS

3. Conceptual presentation/introduction of proposed Malabar Senior Care project at 1860 Highway 1, Malabar, applicant Mr. Craig Hessey
(Note: Conceptual Plans are dated 9-5-07)

Mr. Hessee introduces self and describes proposed project. It calls for three phases of the project. First phase will be a three-story assisted living facility (ALF) with 98 beds. Phase two is the Generational Recovery Center with 38 beds. Third phase are the duplex units up front for transitional housing. He has brought with his Ms. Betty Hughes of their Cedar Creek ALF operation in Merritt Island to answer Board questions related to the assisted living program. He also brought Mr. Stan McKnight who operates a generational recovery facility in West Palm Beach to describe that facility and its operation and answer Board questions.

Mr. Hessee then walked through certain aspects of site plan. The Plan meets Malabar's current open space requirement. Plan has 43% open space. He then points out the wet retention is wet with fountains. The design of the dretention meets the current requirements. Master potable water system. Meet all fire requirements. This project will connect with the 12" water line going in on US1

Roads and sidewalks Road designs meet all requirements. Five-foot wide sidewalks. All locations of the building meet the height and size requirements. Parking requirements meet or exceed requirements for ALFs. Also for the generational recovery



TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 4

Meeting Date: April 9, 2008

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

SUBJECT: Amend LDC for Fences/Walls for S/D Developments (Proposed Ord No. 2008-99)

BACKGROUND/HISTORY:

This ordinance went to Council as a draft only for review and comment at the RTCM 3-17-08. They felt it was appropriate and directed the ordinance be reviewed by the Attorney. This is the ordinance after his review and is intended to address subdivisions only.

The two subdivisions recently completed that had both exceeded the fence height requirement within the RR-65 zoning had prompted this action. The P&Z Board determined that such an amendment is needed to clarify that the intent of Article V, Section 1-5.8 is for all fences and walls and not just for single residential properties.

This draft ordinance was discussed at the P&Z meeting of 2-27-08 and the Board made a motion and voted 5 to 0 to forward it to Council. There was discussion about changing the wording in the ordinance to reflect all residential zoning rather than specific zoning districts but that would require another ordinance revising Article V.

If Council supports making this change the ordinance will be reviewed by the Attorney and scheduled for a Public Hearing at P&Z.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

- Proposed Ordinance 2008-99
- Portion of RTCM 3-17-08
- Portion of P&Z minutes 2-27-08
- Article V, Section 1-5.8, from LDC – 3 pages

ACTION OPTIONS:

Staff seeks recommendation to Council

ORDINANCE NO. 2008-99

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN RELATING TO THE HEIGHT OF FENCES OR WALLS LOCATED ON THE PERIMETER OF A RESIDENTIAL SUBDIVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town Council has determined that current fence regulations do not apply to perimeter fencing of residential subdivisions and clarification is needed relating to fencing associated with residential subdivision developments.

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

SECTION 1. Article V, Section 1-5.8 of the Land Development Code of the Town is hereby amended by adding a new sub-section (i), which new sub-section shall read as follows:

"(i) Perimeter Fencing for Certain Residential Subdivisions/Developments

Any perimeter fencing and/or wall which is placed or located on any portion of the perimeter boundaries of a residential subdivision or development shall comply with the following:

1. In RS Zoning Districts, no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a residential subdivision or development that is not part of a platted residential lot shall exceed 48 inches in height.
2. In the RR Zoning District, fence or wall, including gates, support posts, members, or decorative features, located on any perimeter property of a residential subdivision or development that is not part of a platted residential lot shall exceed 54 inches. Higher perimeter fences and walls within the RR Zoning Districts, not to exceed six (6) feet in height, may be approved by Town Council after considering the recommendation by the Planning and Zoning Board. Prior to approving any fence or wall in excess of 54 inches, the Town Council shall render a finding that the structure is safe and visually compatible in the area. Such fence or wall shall be constructed in a manner that provides adequate visibility at any public or private right-of-way, driveway or street providing access to such lot or parcel, and at an abutting intersection.
3. In the R-MH Zoning District no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a mobile home residential subdivision or development that is not part of a mobile home site shall exceed 48 inches in height.
4. In RM Zoning Districts, no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a multi family residential subdivision or development that is not part of a residential site shall exceed 48 inches in height.

SECTION 2. CODIFICATION. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, that the provisions of Section 1 of this ordinance become part of the Land Development Code of the Town of Malabar. The Town Clerk is hereby authorized and directed to cause the provisions of sections 1, 2 and 3 of this ordinance to be incorporated into the Town's Land Development Code.

SECTION 3. SEVERABILITY. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected and it shall be presumed that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 4. CONFLICT. All ordinances or parts thereof in conflict herewith are hereby repealed to the extent of such conflict with this Ordinance.

SECTION 5. EFFECTIVE DATE. The ordinance shall take effect immediately upon its adoption.

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

Council Member Nancy Borton	_____
Council Member Brian Vail	_____
Council Member Charles (Chuck) McClelland	_____
Council Member Jeffrey (Jeff) McKnight	_____
Council Member Patricia (Pat) Dezman	_____

PASSED AND ADOPTED by the Town Council, Town of Malabar, Brevard County, Florida this day of , 2008.

BY: TOWN OF MALABAR

Mayor Thomas M. Eschenberg

First Reading: 0 _____
Second Reading: 0 _____

ATTEST:

Debby K. Franklin

Portion of RTCM from 3-17-08

K. DISCUSSION ITEMS:

12. **Amend LDC for Fences/Walls for S/D Developments (Proposed Ord No. 2008-99)**

Exhibit: Agenda Report No 12

Recommendation: Discussion and Direction

Mayor has been attending P&Z for the last 3 years. P&Z member brought it up as it related to fences around subdivisions over six feet in height. The decision was made that our code doesn't apply to subdivisions. P&Z took this action to correct this deficiency. Subdivisions will have to comply with the regulations.

Motion: Dezman /Borton to direct staff to prepare ordinance regarding fences. Vote: All Ayes. Only applies to new subdivisions. McKnight thinks they should comply with code. Review all uses.

PORTION OF MINUTES FROM PLANNING & ZONING 2-27-08 MTG:

G. DISCUSSION ITEMS - General Items

3. Fencing for Subdivision Projects proposed ordinance

Discussion was held on the proposed ordinance to add to Article 17, Section 1-17.2, it is the perimeter fencing for subdivisions. Basically, it states that the subdivision has to follow the same rules as the people that live here do. They cannot have 10 ft columns. The Mayor brought up entrance ways and it was determined the it would be discussed at another time. It was pointed out the the Code is silent regarding grand entrance ways.

The question was asked regarding the process and it was explained that P&Z has to make a recommendation and then it goes forward to Council. Question was raised concerning the entrance ways with decorative tops and it was agreed that there should be some leeway to allow creativity in the design of entrance ways. Discussion was held on the Town Attorney's comment that subdivisions do not have to follow the same rules as homeowners because they did not have lots. A subdivision is a collection of lots. It was pointed out that the ordinance was set for individual lots not subdivisions and therefore should be included in the Code. Ms. Zindel questioned if in RS zoning, in front yard a 48-inch fence is acceptable.

V-Chair Reilly stated that is part of this ordinance. It was clarified that in RR zoning the fence height limit is 54-inches with the ability to go to P&Z for up to a 60-inch height. Further discussion was held regarding changing the Code to allow all fencing height to be 54 inches. It was pointed out that the 4-foot height was for sight visibility.

V-Chair Reilly stated that: Pg 260.2, height restrictions for fences and walls should say the "...residential zoning districts..."

Motion: Reilly/Ryan made a recommendation to give this ordinance to Town Council with the change.

Vote: All Ayes

Art V

Section 1-5.8. Fences and walls.

(a) *Definitions.*

For purposes of this section, the following terms shall have the following definitions:

Abut or *abutting property* means a lot or parcel sharing a common boundary with the lot or parcel in question, or a lot or parcel immediately across a public or private right-of-way or street from the lot or parcel in question.

Building line means a line within a lot or parcel established by yard or setback requirements in the land development regulations of the Town, outside of which no principal building or structure may be erected.

Commercial district means any area of the Town having the zoning classification CL or CG in accordance with the land development regulations of the Town.

Fence means a vertical row of nonliving material, exclusive of masonry products, placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) adjacent parcels of land or portions of parcels of land.

Height means the distance from existing grade to the top of such fence or wall including post and/or columns measured on the side facing abutting property.

Industrial district means any area of the Town having the zoning classification IND in accordance with the land development regulations of the Town.

Institutional district means any area of the town having the zoning classification INS in accordance with the land development regulations of the town.

Opaque shall mean that objects located on one side of a fence or wall are not visible from the opposite side when the viewer's line of sight to such object is through such fence or wall.

Residential district means any area of the Town having the zoning classification RR-65, RS-21, RS-15, RS-10, RM-4, RM-6, R-L/C or R-MH, in accordance with the land development regulations of the town.

Wall means a vertical row of masonry materials placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) parcels of land or portions of parcels of land.

Yard means an open, unoccupied space on the same lot or parcel with a building or buildings, other than a court, which is unobstructed from the ground upwards by buildings or structures.

(1) *Required front yard* means an open, unoccupied space extending across the full width of the lot, the depth of which is the minimum horizontal distance established by the Land Development Code beyond which no building may be erected. Is determined by the frontage to which the address is assigned to such lot or parcel.

(2) *Required rear yard* means an open, unoccupied space extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the building line.

(3) *Required side yard* means an open, unoccupied space between the front and rear building lines and the side lot line and the side building line.

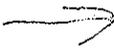
(b) *Permit required for fence or wall.* No fence or wall shall be constructed, erected, replaced or altered unless a permit therefor has been obtained from the Town by the owner of the property on which such fence or wall is to be located, or by some other person duly authorized by such owner. The application for such permit shall be on a form provided by the building official and shall be accompanied by drawings showing the

proposed location of and the specifications for the type of construction of such fence or wall.

(c) *Permit fee.* Permit fees shall be calculated in accordance with Resolution 9-94 and all succeeding fee resolutions. Valuation of such fence or wall for the purpose of establishing the permit fee shall be determined by the building official. No permit shall be issued unless and until all fees associated with said permit are paid.

(d) *Materials and design requirements.*

1. All fences or walls constructed pursuant to the permit issued in accordance with this article shall comply with all applicable provisions of this Code relating to the type of construction, required materials, height and location.
2. All fences or walls shall be designed, constructed and secured in accordance with the adopted building code to meet the specified wind load.
3. Posts and stringers required for the support of fences shall not be visible from the side facing any adjacent or abutting property, for which such fence permit was issued. Wood post shall be pressure treated or of a wood type with a natural resistance to decay and termites as listed in the adopted building code.
4. All walls shall have a painted surface with struck mortar joints or, stucco or other finished surface on the side facing any abutting property for which the permit for such wall was issued.
5. The following provisions shall be prohibited in any fence or wall:
 - a. *Electrified wire strands.* Except in the RR-65 districts when used for the control of animals and only around the control area.
 - b. *Barbed wire.* Except in the RR-65 districts when used for the control of animals and only around the control area, and for the top of fences in the commercial, industrial and institutional districts.

 (e) *Height restrictions for fences and walls in residential districts.* Fences or walls located, erected, constructed, reconstructed or altered on any property located in a residential district shall comply with the following height requirements:

1. Except as provided in this section, no portion of any fence or wall located between the front building line and the front lot line be more than four (4) feet in height.
 2. Any fence or wall located to the rear of the front building line shall be six (6) feet or less in height, except for corner lots.
 3. For any corner lot of which the rear lot line abuts the side lot line of another lot, that portion of such fence or wall located between the side right-of-way line and the side building line adjacent to the side right-of-way shall be not more than four (4) feet in height.
 4. For any lot or parcel not containing a structure, the requirements of subsection (e)1, (2) and (3) shall be applied to required front and corner building lines in the same manner as if a structure had been constructed in accordance with such required yard area or setback as specified within the zoning district requirements.
 5. Any lot or parcel located within a RR-65 District shall be permitted a fence or wall fifty-four (54) inches or less in height within the required front yard. Higher fences and walls, not to exceed six (6) feet in height within the required front yard may be authorized by the Town Council after considering the recommendation of the Planning and Zoning Board. Prior to approving subject structure the Town Council shall render a finding that the structure is safe and visually compatible in the area. Such fence or wall
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shall be constructed in a manner that provides adequate visibility at any public or private right-of-way, driveway or street providing access to such lot or parcel, and at any abutting intersection.

(f) *Height restrictions for fences or walls in commercial, industrial and institutional districts.* Fences or walls located, erected, constructed, reconstructed or altered on any property located in a commercial, industrial and institutional district shall comply with the following height requirements:

1. Commercial district shall be no more than six (6) feet in height. An additional twelve-inch section for security with barbed wire attached may be permitted, total height shall not exceed seven (7) feet in height.
2. Industrial and institutional districts shall be no more than eight (8) feet in height including barbed wire for security.

(g) *Maintenance of fences and walls.* All fences or walls in the Town shall be maintained in good repair and in a structurally sound condition. All fences shall be upright and plumb continuous in alignment.

(h) *Restriction of fences or walls on public easements, utility easements and public rights-of-way.*

1. No wall shall be constructed on any public easement, utility easement or public right-of-way.
2. No fence shall be constructed on any public right-of-way, and except as provided in subsection (3) hereof, no fence shall be constructed on any easement.
3. A non permanent type fence may be constructed on an easement providing the property owner making application for such fence agrees in writing, at the time of application for permit, that the property owner and/or any successors in interest will bear the expense of removal of such fence if access to said easement is required.

(Ord. No. 99-1, § 1, 4-19-00)

Cross references: Buildings and building regulations, ch. 6.