

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY APRIL 27, 2011
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE**
- B. ROLL CALL**
- C. ADDITIONS/DELETIONS/CHANGES**

D. CONSENT AGENDA :

- 1. **Approval of Minutes - Planning and Zoning Meeting – 3/23/2011**
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve

E. PUBLIC HEARING:

F. ACTION:

- 2. **Amend Code to Provide Current Regulations for Adult Care Facility (Ord 2011-38)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; DELETING SECTION 1-2.6.B. 8, LAND USE CLASSIFICATIONS; PROVIDING FOR ADULT CARE FACILITIES; AMENDING SECTION 1-3.1.1 DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND PROVIDING FOR ADULT CARE FACILITIES; AMENDING TABLE 1-6.1 (B) DELETING REFERENCES TO GROUP HOMES AND MAKING PROVISIONS FOR ADULT CARE FACILITIES; AMENDING SECTION 1-9.2.12; PROVIDING FOR ADULT CARE FACILITIES; ESTABLISHING PARKING REQUIREMENTS FOR ADULT CARE FACILITIES; DELETING THE DEFINITION OF GROUP CARE FACILITY IN ARTICLE XX; AMENDING TABLE 1-3.3.A PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2
Recommendation: Action

- 3. **Proposed Fence Ordinance (Mayor Eschenberg)**

Exhibit: Agenda Report No. 3
Recommendation: Action

- 4. **Extend Moratorium or Formulate Regulations Pertaining to "Pain Clinics & Pain Management Clinics"**

Exhibit: Agenda Report No. 4
Recommendation: Action

- 5. Setbacks In RR-65 Zoning**
Exhibit: Agenda Report No. 5
Recommendation: Action

G. DISCUSSION:

- 6. Regulations on The Internet Cafe**
Exhibit: Agenda Report No. 6
Recommendation: Discussion

H. PUBLIC:

I. OLD BUSINESS/NEW BUSINESS:

J. ADJOURN

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIALS ATTENDING THIS MEETING.

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 27, 2011

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Approval of minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

- Who made the Motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim and some editing is done to convey the thought. People do not speak the way they write.

ATTACHMENTS:

Draft minutes of P & Z Board Meeting of March 23 2011.

ACTION::

Secretary requests approval.

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
March 23, 2011 7:30 PM

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 P.M. Prayer and Pledge led Vice-Chair Pat Reilly.

B. ROLL CALL:

CHAIR:	BOB WILBUR,
VICE-CHAIR:	PATRICK REILLY
BOARD MEMBERS:	DON KRIEGER, excused
	BUD RYAN
	LIZ RITTER
	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL, vote
SECRETARY:	DENINE SHEREAR
TOWN PLANNER	KEITH MILLS, excused
TOWN ENGINEER	MORRIS SMITH, P.E.

C. ADDITIONS/DELETIONS/CHANGES: none

For the record Don Krieger excused out of town on business matter.

D. CONSENT AGENDA :

1. Approval of Minute- Planning and Zoning Meeting- 03/09/2011

Exhibit: Agenda Report No. 1
Recommendation: Action

MOTION: Ryan/ Ritter To approve Minutes of 03/09/2011 as presented. **Vote:** All Ayes

E. PUBLIC HEARING: none

F. ACTION:

2. Five-Year Plan Projection For Town of Malabar

Exhibit: Agenda Report No. 2
Recommendation: Action

Wilbur is discussing the additions to the 5 year plan; add the following to the existing list to be submitted for joint meeting:

Land (Property) Acquisition:

- Billie property which is west of the existing Town Hall (2725 Malabar Rd).
- A Municipal Complex by the Fire Station, from the Post Office west to existing Fire Station there is approx. 17 acres. Wilbur is discussing Municipal Complex and Park expansion between the post office and fire station, north toward the park.
- Storm Water parks sites for Retention ponds

Facilities:

- ADA-Handicapped restroom for Trail Head , it is approved on Marie Street by Palm Bay canal to trail head the process with EEL's in Palm Bay not sure of status. Grant Money?

Infrastructure:

- Add to Trail at Oakmont south to Jordan Blvd on east side of Marie Street.- Grant Money
- Stabilize Allen Street from Corey Road to Gilmore Street for fire truck access
- Easement for drainage: Maintenance/update of Drainage ditch behind Camelot the Town has cleaned in the past access of railroad right of way the FEMA ditch

Wilbur explained that Carl Beatty let the Town go down his property line to do maintenance on the Camelot drainage ditch aka: FEMA ditch. Wilbur is explaining to Board the drainage under the railroad tracks is two, four foot culverts going into a round 3 foot culvert to the east side of tracks into the river.

Morris added that there is a direct out let to the river in the baffle boxes.

Wilbur suggests looking at drainage ingress an egress of the water in that area.

Wilbur asks about the maintenance to Debby, she explains it was cleaned in 2003.

The Board is discussing the addition of a pedestrian trail along Malabar Road on the north side being setback from the road and ditch to be safe for pedestrians.

Motion: Ryan/ Ritter To Recommend to Council to Submit the 5-Year Plan as Edited Tonight
Vote: All Ayes

Wilbur is discussing about different locations and amenities for specific areas in the future for a Shelter, a Town Hall, and a Recreation Center and approx.how much acreage would you need. Ryan suggests you should locks up ground, or first option to purchase property. Abare asks what is land along Malabar Road worth now, market and assessed value the same. Abare adds it is s good time to buy land that you will need for future building and Town Hall.

G. DISCUSSION:**3. Continue Land Use Review – Highway 1 Corridor****Exhibit:** Agenda Reports No. 3**Recommendation:** Discussion

Reilly and the Board are discussing the flu- 9 Map.

Abare is discussing the correcting the map, where the restaurant (Riverview Cuban Restaurant is presently located) recommend that the area located on US Hwy 1, become CG the existence use is "CG".

Change page 2:

*Parcel # 28.01 change this parcel to CG from RLC to dark brown as designated on map.

*Parcel #28.0 from HDR to RLC to light yellow

Change page 3:

*Parcels abutting US Hwy 1 RLC

Reilly asked if we should give a list to the Map people.

Change page 4:

Franklin the map from 1988 show HDR nothing that changed, it never saw HD to OI use is conservation, Change blue to OSR (Open Space Recreation)

Action to change parcel 507 504 274 251 269 505 585 from OI to OSR check to see if all owned by state?

Change page 5:

Abare adds that Nelson has no CP land along the river front in Malabar. Wilbur explains that Nelson has a developers plan for his CP (Coastal Preserve property).

Franklin, explains that when a presentation was made Nelson had adequate property, it was not about denying him the use of his land

Zindel future land use it is a good area for CP property at the south end of Rocky Point.

Wilbur adds that on the southern most end of Rocky Point it was suggested a good location for water Front Park for non motorized park for the Town.

Change page 6:

Parcel # 751 LDR not OI.

Reilly suggests we get final version of maps and review, Board is discussing maps for next meeting to review all corrections.

Reilly suggests continuing next meeting with updated edited maps.

Wilbur suggests looking at the developmental plan that Palm Bay has for their river front beautification project for side walks along US1.

H. PUBLIC:

Tom Eschenberg, 2835 Beran Lane, Malabar. The coming attractions to this Board are the following:

- Fence Ordinance will come back to P & Z the Council directed it back to P & Z, I went through and made changes and accepted Town Attorney's recommendation and Morris the Town Engineer's mark ups.
- Town set backs in the RR-65 zoning have the typical lot standards of 1.4 acres property owners can only uses 54% of land due to setbacks.
- On Monday (3/21/2011) last week I sat with Mr. Foley, Frank Plata, and Ben Elliot, to find out what were the objections with the code, concerning Assisted Living Facility they asked about moving code and changes along. Karl Bohne, the Town Attorney sent changes and I looked at it and there is not enough in the Conditional Use. The assisted living center. The group Homes, what state require, after talking what the state requires. Karl whipped out group home, leaving nursing homes. Karl is going to put in something else besides Assisted Living. Start on table for ALC require would be whatever will be set. We can start the process and send to P & Z for review

Abare hands a hand out about Hibiscus Court which is an assisted living facility located in Melbourne, he is explaining about parking spaces, has 2 acres and 3 stories.

Ryan asks is there a way to check into the background of the developers who will be running the facilities for the Assisted Living establishments.

I. OLD BUSINESS/NEW BUSINESS:

Abare, the potential that has to do with Malabar, this is a multi dollar project.

J. ADJOURN:

There being no further business to discuss, **MOTION:** Reilly/Abare to adjourn this meeting.
Vote: All Ayes. The meeting adjourned 9: 22 P.M.

BY:

Bob Wilbur, Chair

Denine M. Sherear, Secretary

Date Approved

DRAFT

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: April 27, 2011

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

SUBJECT: Code Amendment for Adult Care Facility (Ord 2011-38)

BACKGROUND/HISTORY:

During the Council discussion of the proposed Assisted Living Facility Site Plan on March 7, the Mayor pointed out that the current Code did not relate to Assisted Living Facilities and the language in the Code was out of date. Action on the Site Plan and CUP was tabled until an ordinance could be adopted. Council directed the Town Attorney to draft an ordinance to update the regulations in our Code to pertain to Adult Care Facilities. Attorney Bohne drafted an ordinance. The Mayor met with the applicant and the property owner and discussed the conditions. Since the April 13 P&Z meeting had been committed to a joint meeting this is the next date for the review of the ordinance by P&Z. Once the P&Z Board makes their recommendation on the ordinance it will go to Council for action on May 2, 2011. Then the Site Plan and CUP application will be considered by Council.

I did do historical research on this type of facility within OI zoning and the intent of the earlier Code and the Comp Plan was to provide for this type of institutional use which was considered differently than independent residential use. I have not discovered why the ordinance was not included in the codification by Municode.

ATTACHMENTS:

Ordinance 2011-38
Letter dated 3/28/11 from Mr. Plata

ACTION:

Recommendation to Council on Ordinance 2011-38

ORDINANCE 2011-38 P&Z Review 4/27/11

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; DELETING SECTION 1-2.6.B. 8, LAND USE CLASSIFICATIONS; PROVIDING FOR ADULT CARE FACILITIES; AMENDING SECTION 1-3.1.I DISTRICT PROVISIONS; PROVIDING FOR LIMITED RESIDENTIAL USES IN THE OI (OFFICE/INSTITUTIONAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; REMOVING REFERENCES TO GROUP HOMES AND PROVIDING FOR ADULT CARE FACILITIES; AMENDING TABLE 1-6.1 (B) DELETING REFERENCES TO GROUP HOMES AND MAKING PROVISIONS FOR ADULT CARE FACILITIES; AMENDING SECTION 1-9.2.12; PROVIDING FOR ADULT CARE FACILITIES; ESTABLISHING PARKING REQUIREMENTS FOR ADULT CARE FACILITIES; DELETING THE DEFINITION OF GROUP CARE FACILITY IN ARTICLE XX; AMENDING TABLE 1-3.3.A PROVIDING FOR A MINIMUM SQUARE FOOTAGE FOR SINGLE FAMILY HOMES IN THE RM-6 ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

Section 1. Sections 1-2.6.B.8 is hereby deleted. A new section 1-2.6.B.2 is added to read as follows:

"2. Adult Care Facilities. Any facility meeting the criteria and requirements of Long Term Care Facilities, Part I of Chapter 400; Assisted Living Facilities, Part III of Chapter 400; Adult Day Care Centers, Part V of Chapter 400; Adult Family-Care Homes, Part VII of Chapter 400; Health Care Facilities, Chapter 408 and Continuing Care Facilities under Chapter 651 of the Florida Statutes, as amended from time to time."

(Note to Codifier: Section 1-2.6.B shall be renumbered to accomplish the changes herein).

Section 2. Section 1-3.1.I is amended to read as follows:

• • •

"1. OI "Office-Institutional." The OI district is established to implement comprehensive plan policies for managing office-institutional development. This district is designed to

accommodate businesses and professional offices together with institutional land uses on sites which:

- Have accessibility to major thoroughfares;
- Have potential to be served by a full complement of urban services;
- Contain sufficient land area to accommodate good principles of urban design, including sufficient land area to provide adequate landscaping and buffers to separate existing as well as potential adjacent land uses of differing intensities;
- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses (except those uses identified as Adult Care Facilities in 1-2.6.B.2), general retail sales and services, warehousing, and outside storage; and
- Frequently serve as a transition area which buffers residential uses located in one area from a nearby area which accommodates uses of a higher intensity.
- A Malabar Vernacular Style is required for all development along arterial roadways.”

• • •

Section 3. Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code is amended as follows:

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
COMMUNITY FACILITIES														
<u>Adult Care Facilities</u>					<u>C</u>	<u>C</u>		<u>C</u>			<u>C</u>		<u>C</u>	
<u>Group Homes</u>					<u>C</u>	<u>C</u>		<u>C</u>			<u>P</u>		<u>C</u>	

Section 4. Table 1-6.1(B) is hereby amended to delete references to “Group Homes” and substituting in its place the term “Adult Care Facilities” and by amending Note (3) of Table 1-6.1(B) to read as follows:

Conditional Land Uses	Minimum Size Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District (5)	Curb Cut Controls
<u>Group Homes</u> <u>Adult Care Facilities</u>	(3)	(3)	<u>N/A Arterial</u>	<u>N/A 60/30</u>	<u>N/A 25/20</u>	<u>N/A Type A/C</u>	(7)

• • •

"(3) Minimum spatial requirements shall comply with the standards requirements established by the Florida Department of Health and Rehabilitative Services District Provisions."

...

Section 5. Section 1-9.2 is amended to include the following:

"Adult Care Facilities. One (1) space for each five (5) beds plus one (1) space for each employee, including doctors."

(Note to Codifier: Section 1-9.2 shall be renumbered to accomplish the changes herein).

Section 6. Section 1-20.2 of Article XX is amended by deleting the definition for "Group Care Facility".

Section 7. Table 1-3.3.A is hereby amended to provide for a minimum square footage of 1,200 square feet for single family homes in the RM-6 zoning district.

Section 8. 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 this 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 be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 9. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 10. Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

Section 11. This Ordinance shall become effective 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, Carl Beatty	_____
Council Member, David White	_____
Council Member, Steven (Steve) Rivet	_____
Council Member, Jeffrey (Jeff) McKnight	_____
Council Member, Marisa Acquaviva	_____

This ordinance was then declared to be duly passed and adopted this ____ day of _____, 2011.

By: TOWN OF MALABAR

Mayor Thomas M. Eschenberg
Council Chair

First Reading _____
Second Reading _____

ATTEST:

By _____
Debby K. Franklin
Town Clerk/Treasurer

(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

PIE plata engineering, inc.

ENGINEERS * PLANNERS * CONSTRUCTION MANAGEMENT

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March 28, 2011

Town of Malabar

Honorable Mayor Tom Eschenberg, Town Council.

Karl Bohne, Esquire, Town Attorney.

Attention: Debby Franklin, Town Clerk/Treasurer.

2725 Malabar Road, Malabar, Florida 32950-4427.

Re: CUP Application for Sunrise Centre, a Group Home Assisted Living Facility.

Dear Mr. Bohne:

This letter is in follow-up to your March 17, 2011 draft ordinance

From initial application, we thought that this CUP only needed the step of administrative approval of specific parking use, normally granted by the Town Council under the Section 1.9.3-3.

During the March 7, 2011 public meeting, the Town Council determined to modify the overall Code, since the unknown of the ALF being a Group Home by HRS, and other issues related to existing parking problems.

We followed with explanation that the ALF Group Home seems covered by current code, since the code says "or successor" agency. Also, we verified that there were no violations on existing child care site. The existing parking is per code, and the traffic pattern is per convenience.

We followed with a March 21, 2011 meeting with Mayor Eschenberg. Our finding was that his main concern was the table 1-6.1(B) that shows all Group Home requirements to be N/A, like there are no applicable rules for Group Homes conditional use.

I tried to explain that for the N/A, the Land Use provision per Zoning District still governs, limited by square foot impervious, and it has been already reviewed to meet the O/Institutional code.

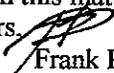
Mayor Eschenberg instructed to modify the draft to remove the N/A, and fill the table columns with a number (#) instead of the N/A. The number (#) would be described at the bottom, as "the applicable minimum, per zoning district provision". [This CUP is allowed in several Districts per Table 1-3.2]. The parking is still appropriate, per your draft Section 1-9.12 modification. The Nursing Home use would remain on that table 1.6.1(B), because it was already referenced in several places. Nursing Home is more intense use than ALF, closer to hospital operations.

So far, the code changes are the same requirements that were used by Town staff to review and recommend approval of this plan. The Assisted Living Facility is best fit for this Institutional zoning classification, and a reason why I selected this Malabar parcel from other available sites.

Instead of review of multiple use affecting overall code, another option could be to allow the ALF use within the O/I zoning, on Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code. The Brevard County and City of Melbourne regulations are examples where the Assisted Living Facility is an approved use within institutional zoning and the CUP process is not needed.

Thank you for your assistance in this matter, we remain available should any questions arise.

Very truly yours,


Frank Plata, C.G.C, P.E.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3

Meeting Date: April 27, 2011

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

SUBJECT: Mayor's Proposed Revisions to Fence Ordinance

BACKGROUND/HISTORY:

At the RTCM of September Council heard the P&Z recommendation on the fence ordinance and asked the Town Engineer to provide verbiage to add to the recommendations from the P&Z Board. At the time there were other higher priority projects the Engineer had been assigned and he got to the fence project in early March. A draft ordinance was put together incorporating the P&Z recommendations and the Engineer's language but had not been reviewed by the Engineer or Attorney in time to go to Council on March 21, 2011.

Mayor Eschenberg as Council Chair directed this fence issue be brought back to Council on March 21, 2011 and provided his proposed changes to the fence ordinance.

Council directed that the proposed ordinance go back to P&Z for review and recommendation.

ATTACHMENTS:

Email from Mayor Eschenberg with markup and clean versions of ordinance verbiage.

Portion of minutes from RTCM 9/7/2010

Portion of minutes from RTCM 3/21/11

ACTION OPTIONS:

Recommendation to Council on proposed changes

Town Clerk / Treasurer

From: Tom Eschenberg [teschenberg@cfl.rr.com]
Sent: Monday, March 14, 2011 11:57 AM
To: Town Clerk / Treasurer
Subject: Agenda Item
Attachments: bg.jpg; Fence Ordinance my rev 311c.doc; Fence Ordinance my rev 311.doc

Please add to next agenda as an action item. One attachment is my markup of the last fence ordinance considered by council. The other attachment is a clean one with my changes incorporated.

Tom

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MARKUP

Section 1-5.8. Fences, and walls and entranceways.

(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.

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.

Entrance gate means a gate designed for ingress and egress for vehicular traffic to and from a lot or parcel that directly connects to the public roadway. Entrance gates ~~may be constructed of approved materials and~~ may be opened manually or by automated means and may be guided by hinges, tracks, or other ~~approved means as approved by the Adopted Building Code~~.

Entranceway means columns, poles, walls, arches or other structures that define a point of entry onto a property. The entranceway may or may not have a gate.

Fence means a vertical row of nonliving material, 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. Such amenities as kennels, cages, corals, trellises and related conveniences are not fences for the purposes of this subsection.

Gate means a rigid structure to open and close in order to allow ingress and egress through a fence or wall. Gates ~~may be constructed of approved materials and~~ may be opened manually or by automated means and may be guided by hinges, tracks, or other ~~approved means as approved by the Adopted Building Code~~.

Height means the distance from existing grade to the top of such fence or wall including post and/or uprights 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 primarily composed 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.

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.

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

Commercial, Industrial and Institutional districts shall be no more than eight (8) feet in height including barbed wire for security.

(c) Height restrictions for fences, walls, gates, ~~arches~~ entranceways and related structures in residential districts shall comply with the following height requirements:

1. Except as provided in this section, no portion of any fence, ~~or~~ wall or gate located between the front building line and the front lot line shall be more than five (5) feet in height and if located to the rear of the front building line shall be no more than six (6) feet in height. ~~Such permitted fences or walls 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.~~
2. For any lot or parcel not containing a structure, the requirements of this section (1-5.8) ~~subsection (c) 1 or 4~~, shall be applied 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.
3. Any lot or parcel located within a RR-65 District shall be permitted a fence or wall six (6) feet or less in height and gates and/or entrance gates eight (8) feet or less in height
4. ~~Subject to the requirements in this subsection the owner of any lot or parcel located in RR-65 District may install gates and/or entrance gates and supporting structures that do not exceed two (2) feet above the maximum height restriction to which such gate and support structures is attached.~~
5. ~~Arches or other decorative features may supplement gates. Arches or other decorative features associated with an entrance gate serving as the primary vehicular ingress and egress to the public roadway must meet FDOT minimum height requirements of 13.6 feet for safe passage of emergency vehicles. In addition such structures must be set back at least 15 feet from the front property line and a minimum of 20 feet in width.~~

6. Except as provided in this section, no portion of any entranceway shall be more than six (6) feet in height.

7. Any lot or parcel located within a RR-65 District shall be permitted an entranceway eighteen (18) feet or less in height. If part of the entranceway structure is erected over the driveway, that part of the structure shall meet minimum DOT height requirements.

8. If a gate is installed to provide ingress from a major collector road, the gate must be set back at least fifteen (15) feet from the property line.

(d) Height restrictions for 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 Zoning Districts, RS, RR-65, R-MH, & RM, 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 shall exceed six (6) feet in height.

(e) Maintenance of fences, walls or related structures. All fences, walls and associated structures in the Town shall be maintained in good repair and in a structurally sound condition. All such structures shall be maintained to their original specifications.

(f) 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 relating to the type of construction, required materials, height and location as approved by the Adopted Building Code.~~

2. Posts and stringers required for the support of opaque fences shall not be visible from the side facing any abutting property, for which such fence permit was issued. Posts shall be a treated wood type or wood or material type with a resistance to decay as adopted by code.

3. 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.

4. 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.

(g) Permit required for fence, walls, entranceway and related structures. No fence, walls, entranceway or related structures shall be constructed, erected, replaced or altered between abutting parcels unless a permit therefore 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.~~ The Building Official shall deny a permit if he believes the proposed structure creates a threat to health or safety. Unless requested otherwise by the applicant, denial of a permit shall create an automatic appeal to the Town Council after consideration and recommendation by the Planning & Zoning Board. Permits are not required for periodic repair and maintenance of an existing fence or wall.

(h) Permit fee. Permit fees shall be calculated in accordance with adopted resolutions. No permit shall be issued unless and until all fees associated with said permit are paid.

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

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

2. A non permanent fence or gate may be constructed on any public easement providing the property owner making application for such fence has submitted written permission from any affected property owners and 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 when access to said public easement is required.

(j) All fences, walls or entranceways 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.

(k) Town Council may authorize non-compliant design specifications only 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.

(Ord. No. 99-1, § 1, 4-19-00; Ord. No. 08-05, § 1, 5-5-08)
Cross references: Buildings and building regulations, ch. 6.

Clean

Section 1-5.8. Fences, walls and entranceways.

(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.

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.

Entrance gate means a gate designed for ingress and egress for vehicular traffic to and from a lot or parcel that directly connects to the public roadway. Entrance gates may be opened manually or by automated means and may be guided by hinges, tracks, or other means.

Entranceway means columns, poles, walls, arches or other structures that define a point of entry onto a property. The entranceway may or may not have a gate.

Fence means a vertical row of nonliving material, 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. Such amenities as kennels, cages, corals, trellises and related conveniences are not fences for the purposes of this subsection.

Gate means a rigid structure to open and close in order to allow ingress and egress through a fence or wall. Gates may be opened manually or by automated means and may be guided by hinges, tracks, or other means.

Height means the distance from existing grade to the top of such fence or wall including post and/or uprights 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 primarily composed 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.

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.

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

Commercial, Industrial and Institutional districts shall be no more than eight (8) feet in height including barbed wire for security.

(c) Height restrictions for fences, walls, gates, entranceways and related structures in residential districts shall comply with the following height requirements:

1. Except as provided in this section, no portion of any fence, wall or gate located between the front building line and the front lot line shall be more than five (5) feet in height and if located to the rear of the front building line shall be no more than six (6) feet in height.
2. For any lot or parcel not containing a structure, the requirements of this section (1-5.8) shall be applied 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.
3. Any lot or parcel located within a RR-65 District shall be permitted a fence or wall six (6) feet or less in height and gates and/or entrance gates eight (8) feet or less in height
4. Except as provided in this section, no portion of any entranceway shall be more than six (6) feet in height.
- 5 Any lot or parcel located within a RR-65 District shall be permitted an entranceway eighteen (18) feet or less in height. If part of the entranceway structure is erected over the driveway, that part of the structure shall meet minimum DOT height requirements.
- 6 If a gate is installed to provide ingress from a major collector road, the gate must be set back at least fifteen (15) feet from the property line.

(d) Height restrictions for 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 Zoning Districts, RS, RR-65, R-MH, & RM, 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 shall exceed six (6) feet in height.

(e) Maintenance of fences, walls or related structures. All fences, walls and associated structures in the Town shall be maintained in good repair and in a structurally sound condition. All such structures shall be maintained to their original specifications.

(f) Materials and design requirements.

1. Posts and stringers required for the support of opaque fences shall not be visible from the side facing any abutting property, for which such fence permit was issued. Posts shall be a treated wood type or wood or material type with a resistance to decay.
2. All walls shall have a painted surface with struck mortar joints, stucco or other finished surface on the side facing any abutting property for which the permit for such wall was issued.
3. 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.

(g) Permit required for fence, walls, entranceway and related structures. No fence, walls, entranceway or related structures shall be constructed, erected, replaced or altered between abutting parcels unless a permit therefore 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. The Building Official shall deny a permit if he believes the proposed structure creates a threat to health or safety. Unless requested otherwise by the applicant, denial of a permit shall create an automatic appeal to the Town Council after consideration and recommendation by the Planning & Zoning Board. Permits are not required for periodic repair and maintenance of an existing fence or wall.

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

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

2. A non permanent fence or gate may be constructed on any public easement providing the property owner making application for such fence has submitted written permission from any affected property owners and 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 when access to said public easement is required.

(j) All fences, walls or entranceways 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.

(k) Town Council may authorize non-compliant design specifications only 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.

(Ord. No. 99-1, § 1, 4-19-00; Ord. No. 08-05, § 1, 5-5-08)

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

6. Recommendation from Planning & Zoning Board – Fences

Exhibit: Agenda Report No. 6
Recommendation: Request Action

Pat Reilly, Howell Lane, Vice-Chair of P&Z stated that the Board and Council have worked on this issue for over two years. He stated the Mayor had attended some of the P&Z meetings and presented his information and suggestions. Some of his recommendations were taken by the Board and some were not. As a team of the five member and two alternates they have had much input on this. They worked very hard on the wording as it is the hardest part. The P&Z Board is asking for Council to accept the wording and then have it put into ordinance form and approved.

Mayor then spoke and said he doesn't like anything vague in the ordinances. Referring to the wording, under gates in the definitions, it says approved materials; Mayor feels it should say materials approved by the Building Official or the adopted building code but when he asked the Building Official Roger Cloutier, Cloutier said the Florida Building Code does not address fences or gates specifically. Franklin said that our Code states that a fence is a structure and all structures require a building permit. The permit for the structure would require the construction to meet Florida Building Code. Mayor said there is no code per the Building Official. Vail said the material has to be substantial in nature. Attorney Bohne asked Council if they want to define "approved materials." Vail said does the entrance gate include the support structures for the gate. Remove the reference to approved materials in its entirety.

Attorney Bohne said he checked Malabar Code and verified a fence is a structure. Attorney also stated Council should not give that much allowance to one person; maybe the Building Official doesn't like brick; then you have an issue.

Mayor said this had to do with gates. The next issue Mayor has is in section C.1. excluding RR-65, making five (5) feet the maximum height. Mayor said when P&Z Member Don Krieger did this there was a line dropped. Borton said it should be allowed to be 6 feet. In current Code it is 4 feet in front and 6 feet in back. Bob Wilbur said this came from the desire of property owners to build structures to make statements and P&Z was asked to incorporate them into the fence ordinance. Wilbur said you have to move those entry ways back into the yard. Put them in the yard area itself and pull a permit for an accessory structure. The height would then be limited by the height restriction of 35 feet. The further you put them back would allow you to get a trailer and truck off the road and emergency vehicles can get in.

Vail did not think going to 6 feet in section c.1 would be a problem. Mayor said the second statement in c.1 is a safety statement he felt it should be in its own section so it applies to all fences. It is a safety issue so it doesn't matter if it is residential or commercial or industrial.

Under c.4. Mayor said instead of the 2 feet above height of fence is open to interpretation. Why not just put 8 feet and be done. Vail said it is the proportion with the fence. Mayor said the gate that started this discussion is on Eva Lane and there was no fence. The fence was added later and is not 4 feet high. Does he now have to cut his gate down?

Under c.5. the minimum set back and width Mayor has a problem with. Mayor can see this on a main road but not on the little dead end roads that we have so many of. He can't see putting those kinds of restrictions on these property owners. Rivet said we don't have problems with trucks getting into their properties. Vail said a lot of people have already pushed their gates back in.

Mayor said there would be 100's of gates that would not be compliant if this wording was approved. The other issue the Mayor has is the 20 feet width requirement for driveways. There are a lot of residences where the DW over the culvert is not near that. Everyone is grandfathered in until they have to replace it. Rivet doesn't want to restrict anything property owners can do unless you absolutely have to. Rivet said if you are going to require people to put in a wider DW it is penalizing the property owner. If someone has to rebuild, then you have to have a standard. Rivet said if the requirement is for public safety, then also require silver for all re-wiring because it is safer and also require mandatory sprinkler systems in residential homes. He asked how wide is a typical DW? Morris Smith said most are 12-foot D/W with a grass area on each side and the 6 foot mitered end. Council asked Morris Smith for his opinion. Morris Smith said the gate should match the geometry of the D/W. Borton asked him to write the section covering this. He agreed to do so.

Morris Smith explained the requirement for mitered end sections in residential areas and related the very recent issue with the new residents of property on Atz and Smith. Morris Smith was pleased they were so willing to comply and the property owners in turn were thankful for the Town's input and assistance.

Vail said RE: DW radius if they are that far set back 1000 then you would have an exception. If you can't drag a fire hose to the house you need to access the property. Morris said most new homes have 16' DW and our code provides for it.

Mayor's last comment was a typo on page 89, para 2 first line, typo - "or" after joints should be removed.

Council asked Morris Smith for input. He recommended Council add a "cumulative height" statement in the code to determine how to measure the height. If tonight you were voting on this, he would recommend they need to add a definition for "existing grade". Council asked him to do so and Morris will provide both a definition and add the cumulative statement for existing elevation. Vail asked Morris to work on it. P&Z has completed their work. Attorney Karl Bohne will put it into an ordinance form from Morris Smith. Planning and Zoning Board Vice Chair Patrick Reilly addressed Council and answered questions. Morris said the Code should a guide to the residents.

MISCELLANEOUS:

5. Mayor's Proposed Revisions to Fence Ordinance

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Mayor stated he did not know if he was going to get a fence ordinance from the Engineer so he did his draft based on P&Z recommendations. He later received the Engineer's recommendations. Mayor put the column height at 18 feet as he looks during his drive around town each week. Also took out "approved per building code" as Roger Cloutier Building Official said no building code exists for fences.

He added section "i." that you can't obstruct vision in all districts, not just residential. He also allowed fences on vacant land and allowed them in all districts not just residential.

Acquaviva asked if P&Z had heard his recommendations. Mayor said he addressed gate height and aches and setbacks. Has a big problem with the set back in P&Z recommendations. The 15 foot was for allowance to pull off road to open and close gate. That 15 foot setback should only apply to collectors. He gets this from driving around town. Sometimes you have houses that are set back 40 feet and if you have to set back 15 feet then the house is only 25 feet. On page 3 – he added in materials, g, the building official shall deny a permit if it is a threat to health and safety and such denial will trigger an automatic appeal to council. He also took the engineer's comments and added and modified and then send it back to P&Z. He would like Council to send the Mayor's marked up copy and the Engineer's marked up back to P&Z.

Beatty said we need a maximum height – meet the requirements of DOT standards. The other issue is the radius. Another issue is as of July 1, 2011 new law exempts agricultural fences from town requirements. That needs to marry in to this. Rivet said it is not necessary to make the point. RR65 is not automatically exempt.

Karl Bohne said he doesn't know how it would .
Karl said this could go in the land use ord also.
Consensus of Council - send this to P&Z.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: April 27, 2011

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

SUBJECT: Extend Moratorium or Establish Regulations for Pain Management Clinics

BACKGROUND/HISTORY:

In August 2010, P&Z recommended Council follow the County's lead and adopt an ordinance placing a six-month moratorium on issuing BTRs for this type of business. This was to allow time to see how the State laws succeeded in regulating these operations. The State regulations have never gone into affect for a variety of reasons. The County extended their moratorium in February for another six-months. The cities of Satellite Beach, Titusville and Cocoa have established regulations.

The ordinance Malabar Council approved placing a six-month moratorium on BTRs for this type of business expired in February, 2011. We have been contacted by an attorney's office that represents these operations. This type of business could open in any existing building not have Staff is looking for some direction. Since the moratorium has expired, such a business could get a BTR and open in any area zoned OI, CL, CG, or R/LC within Malabar.

ATTACHMENTS:

Articles on issue
Ordinance 2010-32

ACTION OPTIONS:

Recommendation to Council to either extend moratorium or adopt regulations

Pill-mill proposal heads to Senate

Written by

JOHN A. TORRES
FLORIDA TODAY

Apr 22, 2011

Only hours after a Brevard drug sweep resulted in 20 arrests for people allegedly dealing illegal prescription drugs, the Florida House passed a bill that promises tougher penalties for "pill mills" that supply drug dealers and addicts with illicit prescription painkillers.

The 106-1 roll call Thursday sends the measure to the Senate, where it's expected to meet resistance on grounds that it's still too weak. The bill (HB 7095) would ban most doctors from dispensing controlled substances and limit pharmacies to dispensing 5,000 doses per month.

"In Florida, we don't have tough criminal penalties for doctors and pain clinics that are doing this, and that's what we're fighting for," Attorney General Pam Bondi said during a press conference Thursday at the Titusville Police Department.

The bill includes the state's prescription tracking system that would allow pharmacists to see what medications patients are receiving from other doctors and pharmacies.

"I applaud . . . the Florida House of

Representatives for passing legislation critical to combating Florida's prescription drug epidemic," Gov. Rick Scott said in a statement. "I also commend the House for crafting a bill that is both tough on illegal distributors and fair to law-abiding industry professionals."

Scott and Bondi promised to continue working with the Senate to ensure the bill becomes law.

The Associated Press contributed to this report. Contact Torres at 321-242-3649 or jtorres@floridatoday.com

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State's pill mill war invades Space Coast

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State brings war on pill mills to Space Coast

Written by

JOHN A. TORRES
FLORIDA TODAY

9:41 AM, Apr. 22, 2011|

TITUSVILLE — Florida's Attorney General Pam Bondi called Florida the "epicenter of prescription drug abuse" and said it would take more efforts like Thursday's Brevard County multiagency drug sweep, as well as expected changes in the state Legislature, to rid the state of the scourge.

Wearing the bracelet of an 18-year-old girl who overdosed in March, Bondi applauded the 20 arrests made as a result of Thursday's operation at an afternoon news conference at the Titusville Police Department.

"I've spoken to the attorney generals of Kentucky and Ohio and learned that drug dealers are flying to Florida to get their drugs now because of tougher laws in those states," she said.

Bondi previously stated that stopping pill mills was her top priority since taking office, even labeling unscrupulous pill mills as "drug traffickers." The legislation will result, she said, in a database that would allow pharmacists and doctors to see what prescriptions patients were filling and how

often.

Her visit to Brevard came only days after President Obama also announced an initiative to crack down on the problem.

"Pill mills" are non-legitimate pain management clinics that dispense narcotics on site for cash.

How it went down

SWAT teams, undercover agents, and local and federal law enforcement officers targeted more than two dozen alleged drug dealers during coordinated pre-dawn raids Thursday at several Brevard locations.

Armed with search warrants, arrest warrants and flash-bang grenades, at least a half-dozen search warrants were executed before sunrise.

Titusville Police Chief Anthony Bollinger said the crime ring moved 3,600 doses of

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oxycodone worth \$47,000 last month alone. Last year, he said, the group sold 43,000 pills.

"There are more pill mills in Florida than there are McDonald's," he said, attaching some of the blame on doctors prescribing the pills. "I'm not talking about good doctors. I'm talking about those who claim to be in the medical profession who are prescribing death for a profit."

Bollinger said the investigation was continuing and would not comment on whether any pain clinics or pharmacies in Brevard were being investigated.

'Synthetic heroin'

Brevard County Sheriff Jack Parker called the drugs the equivalent of "synthetic heroin."

"By taking aggressive actions such as this enforcement operation and community awareness programs, we can decrease abuse and hopefully prevent overdose deaths," he said. "We must do everything possible to inform our citizens about the dangers of misusing prescription medications. Just because it is prescribed, doesn't mean it's not deadly. It's even more powerful than street heroin."

Dubbed "Operation License to Ill" -- an homage to the rap group the Beastie Boys -- the multi-agency effort cracked down on what officials called a "full-time illegal prescription drug operation."

The Titusville Police Department initiated the case in November after a tip. The Brevard County Sheriff's Office was brought in earlier this year to assist. Also participating were agents with the Florida Department of Law Enforcement and Drug Enforcement Administration.

"In March and April, we conducted a full-time investigation with Titusville Police," said Lt. Vic DeSantis of the sheriff's office Special Investigations Unit. "We corroborated that these people were engaged in an organized effort to visit pain management clinics in Osceola, Orange and Seminole counties. This was a full-time job for them. They visited clinics daily and sold the pain medications by the end of the day."

Officials said the "ringleaders," Michael Dennis and Yolanda Riley of Rockledge, were arrested shortly after 6 a.m. without incident.

"(Riley) is inside crying and praying and saying, 'I don't know why this is happening,'"

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" sheriff's Agent Todd Beuer said outside the residence at 52 Knollwood Drive in Rockledge, as the couple were being handcuffed. "(Dennis) knows it's the end."

The 20 arrested are being charged with conspiracy to commit trafficking in illegal drugs of 28 grams or more as well as using a telephone to commit a felony.

Case confidence

Assistant statewide prosecutor Anne Wedge-McMillen was present at the bust and seemed confident in the state's case.

"We have extensive evidence that they have been doctor shopping, going from pain clinic to pain clinic around Central Florida and South Florida, collecting prescriptions and selling the drugs on the street for \$13 to \$15 a pill," she said.

This week, the federal government announced a new strategy to cut misuse of powerful painkillers such as oxycodone by 15 percent within five years and take particular aim at Florida-based "pill mills."

Under one part of the plan, more than 1 million doctors would have to undergo training on proper prescription practices as a condition for their ability to prescribe highly addictive drugs known as opioids.

"The key is that everyone realizes there is no magic answer to this," Gil Kerlikowske, President Obama's national drug policy director, said in an interview with The Associated Press. "It's a really complex

problem."

The first-ever comprehensive federal plan focuses on four main areas:

- Education for prescribing physicians and the public, including a news media campaign about the drugs' dangers.
- Pushing for tracking databases in all 50 states.
- Better methods of throwing out unused or expired prescriptions.
- More intense training and attention by law

enforcement on illegal pill mill clinics.

Fight in Florida Florida is the epicenter of the deadly rise in abuse of oxycodone and similar addictive painkillers, with doctors in Florida prescribing far more of the drugs than all other states combined, according to the Drug Enforcement Administration. And Florida's pill mills are the supplier of choice for much of the eastern United States, causing a ripple effect of drug overdoses and addiction in Appalachia and other points to the north -- where the phenomenon dubbed the "OxyContin

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Express" includes busloads of people coming to Florida just for pills. Sheriff's Office Cmdr. Doug Waller stressed that enforcement and educational efforts were not designed to cause patients who have legitimate needs for these medications to be discouraged or afraid to use them.

"And we definitely don't want to restrict doctors and pharmacists from providing these medications when appropriate," he said. "We want a balanced approach consisting of reasonable steps to ensure these powerful medications don't end up in the wrong hands while legitimate patients receive the care they both need and deserve."

Cocoa Beach surgeon Dr. Michelle Henderson has seen the drug problem firsthand.

"I frequently encounter new patients who have been getting oxycodone and expect to continue to get it for minor orthopedic problems, dictating the dose and quantity they want," she said. "Oxycodone should be administered for acute fractures or postoperative pain for short periods. It is very addictive, as are most narcotics."

When used properly, oxycodone and similar medications help people deal with chronic pain by slowly releasing key ingredients over many hours. Abusers crush the pills and sniff or inject them, resulting in a euphoric heroin-like high.

Reform time

Wayne Ivey, FDLE's resident agent in charge for Brevard County, said Florida needs to become the leader in reform rather than the leader in overdose deaths.

"Our continued enforcement efforts demonstrate that this epidemic is not a local issue and requires a national coordinated effort," he said. "Brevard County's partnerships and collaboration have historically proven effective. This initiative will be challenging, too many lives are at stake to take a less aggressive approach."

Dr. David Williams of Merritt Island agreed that Florida leads in number of pill mills. But, he said, changes are being instituted.

"Florida is aware the state has a problem and has passed legislation to curtail these clinics," he said. "A new Florida law enacted (in October) requires all pain management to be owned by a physician and be registered with the state. Furthermore, these clinics can dispense no more than 72 hours worth of medicine paid for by cash."

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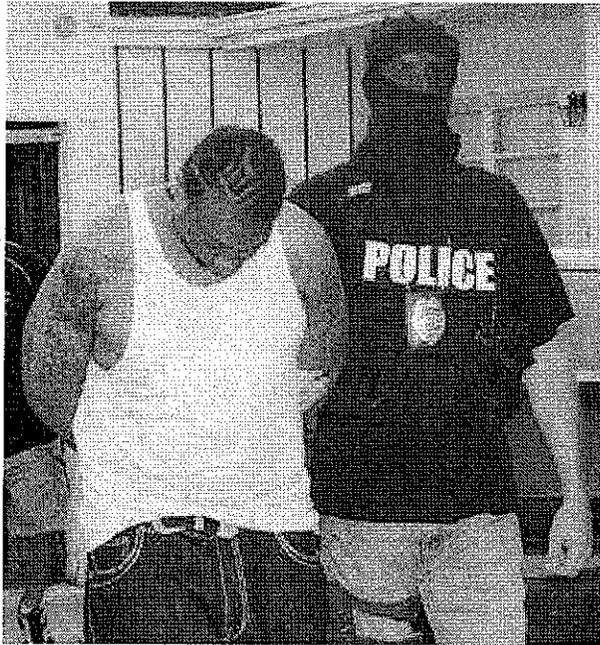
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Added Dr. Stephanie Haridopolos, whose husband, Mike, is the Florida Senate p resident: "As a mother and a physician, I am very concerned about this epidemic," she said. "I applaud the efforts of the Florida Legislature for making the drug database a reality. I believe this is a good start, but only the first step needed to help eradicate this disease known as addiction."

'Operation Licensed to Ill' drug bust

The Associated Press contributed to this report. Contact Torres at 321-242-3649 or jtorres@floridatoday.com



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Alleged ringleader Michael Dennis is arrested during the "License to Ill" operation. / Craig Rubadoux, FLORIDA TODAY

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Wednesday
April 20, 2011

Feds map strategy against painkillers

ASSOCIATED PRESS

MIAMI — The White House drug czar wants doctors, states and law enforcement working harder to stop America's deadliest drug-abuse problem: highly addictive prescription painkillers. They are killing more people than heroin and cocaine combined as they foster a slew of illegal "pill mill" clinics centered in Florida.

The federal government on Tuesday announced its first-ever comprehensive strategy to combat the abuse of oxycodone and other opioids, aiming to cut misuse by 15 percent in five years. That goal may sound modest, but it would represent a dramatic turnaround: Emergency room visits from prescription drug overdoses doubled from 2004 to 2009, when they topped 1.2 million, according to federal health officials.

"To say we are going to do away with the problem in five years, we cannot do that," said Dr. Roland Gray, medical director of the Nashville-based Tennessee Medical Foundation and a Food and Drug Administration adviser on addiction issues. "I think they are headed in the right direction."

The new approach will depend on education, stepped-up law enforcement and pill-tracking databases, with particular emphasis on Florida, where 85 percent of all oxycodone pills in the nation are prescribed. Many of those end up along the East Coast and in Appalachia, where people take buses to Florida just to get pills in phenomenon dubbed the "OxyContin Express."

"The key is that everyone realizes there is no magic answer to this," Gil Kerlikowske, President Barack Obama's national drug policy director, said in an interview with The Associated Press. "It's a really complex problem."

Danny Webb, the sheriff of Kentucky's rural Letcher County, said he would welcome a 15 percent drop in his use of prescription drugs.

"Anything would help because we're drowning in it here in eastern Kentucky," Webb said, adding that he is skeptical any government plan will ultimately work. ■



White House drug czar Gil Kerlikowske said "there is no magic answer" to the abuse of painkillers.

Disputed pill tracking system gets go-ahead

ASSOCIATED PRESS

TALLAHASSEE — The Florida Department of Health on Friday announced it is going ahead with a disputed prescription drug tracking system to help close down "pill mills" that sell painkillers and other medications to drug dealers and addicts.

Gov. Rick Scott wanted the database scrapped, questioning its effectiveness and arguing it would infringe on patient privacy, but Surgeon General Frank Farmer Jr., a Scott appointee, cleared the way for implementation by rejecting a contract challenge that has held it up for the last four months. Farmer cited a state law passed two years ago to create the monitoring system.

4/9/11
Law enforcement officials say the lack of a database has made Florida the nation's epicenter of prescription drug abuse, attracting buyers from across the country in what's been dubbed the "Flamingo Express."

Attorney General Pam Bondi and Senate President Mike Haridopolos, both strong supporters of the electronic monitoring system, hailed Farmer's order.

The Merritt Island Republican, who's also running for the GOP U.S. Senate nomination, said a bill (SB 818) pending in the Florida Senate would strengthen the monitoring system and increase privacy protections.

Legislation, though, has been introduced in the House to repeal the monitoring system. It has support there from House Speaker Dean Cannon, R-Winter Park, as well as Scott.

Bondi said the tracking system "will enable law enforcement to act more quickly in identifying and arresting pill operators."

Scott's office did not immediately respond to a request for comment. ■



floridatoday.com

3/10/2011

TALLAHASSEE

Drug company offers \$1 million for tracking system. The company that makes the widely abused painkiller Oxycontin has offered to contribute \$1 million for a prescription drug-tracking system in Florida.

Purdue Pharma LP made the announcement Wednesday to help crack down on Florida pill mills, which provide illicit prescription medications to addicts and drug dealers.

The Florida Legislature has not funded the monitoring system, instead saying the state must seek private contributions.

Scott opposes pill mill tracking

ASSOCIATED PRESS

TALLAHASSEE — Gov. Rick Scott wants to repeal the state's yet-to-be-implemented prescription drug tracking law that's designed to crack down on "pill mills" supplying drug dealers and addicts who flock to Florida from states already operating such systems.

Scott spokesman Brian Hughes said Tuesday that the electronic monitoring may not be as effective as advocates claim. The governor also was worried it might intrude on patients' privacy, he said.

The proposed repeal, though, drew sharp opposition from the Florida Academy of Pain Medicine. The state added that Florida's pill mill crisis is hampering access to legitimate pain care, but without a monitoring system the state "is fighting a losing proposition."

Battling drug abuse

Keep pill-mill monitoring database on Florida's books

Good for Senate President Mike Hardopolos, who is standing by his convictions on Florida joining 34 other states that have set up pill-mill monitoring databases to crack down on drug abuse and crime.

The legislature approved the database in 2009 to combat the Sunshine State's reputation as the illegal drug prescription capital of the nation and the rising death toll from abuse of drugs such as oxycodone.

Pill-mill doctors illegally prescribe the narcotics to addicts, many of whom come to Florida from out of state to shop for stacks of prescriptions.

The mills are a plague in South Florida, but the evil is spreading north, including to the Space Coast, which is why the database has the strong support of Brevard County Sheriff Jack Packer and other law enforcement leaders.

And why communities such

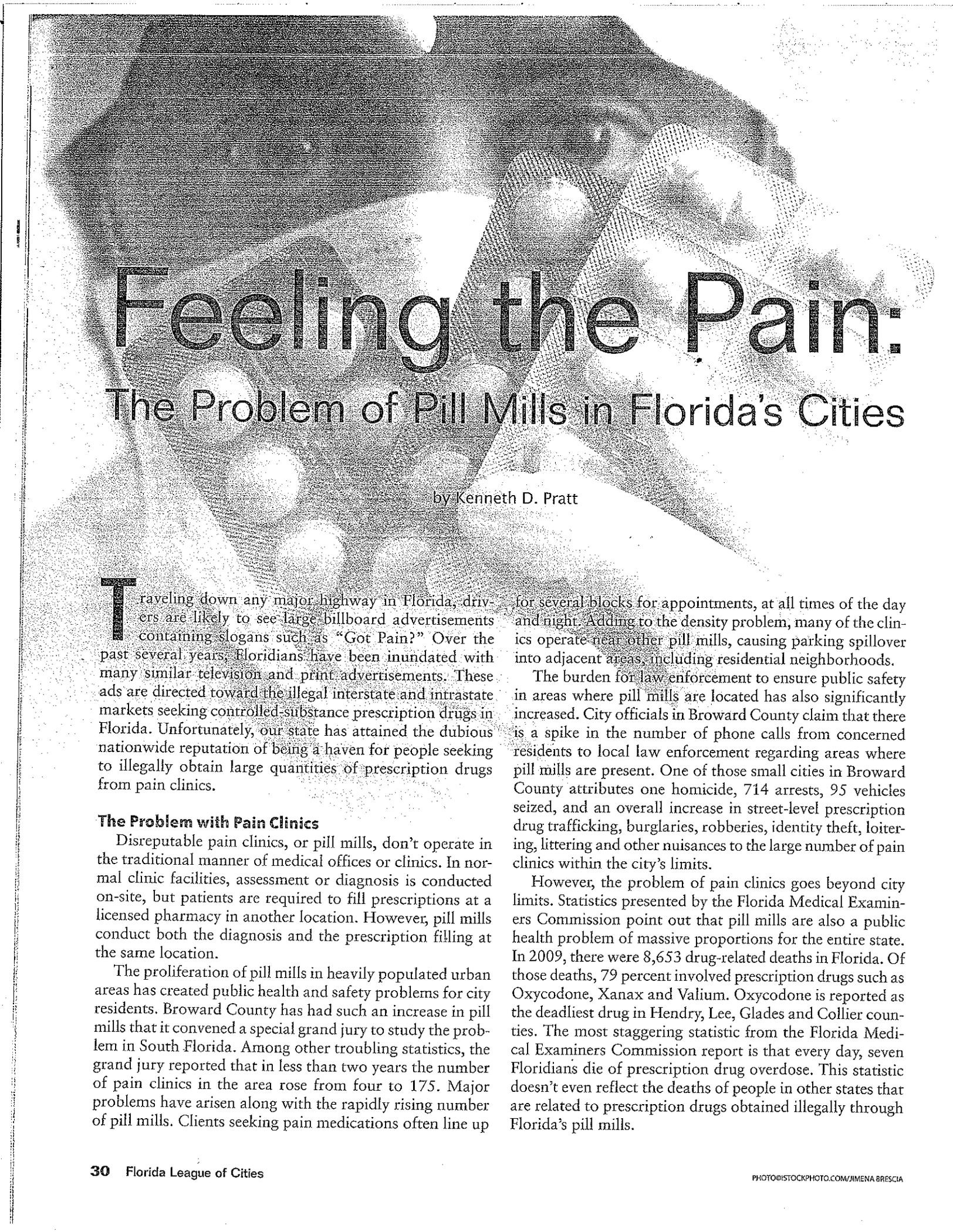
as Titusville and Palm Bay have clamped down on pain clinics they suspect deal out the illegal drugs.

Gov. Rick Scott wants to kill the database, saying it's too costly and would be ineffective but those are red herrings. Federal grants and private sector dollars will pay for the monitoring system, and states using the databases say they work well.

But Hardopolos is now also battling GOP House Speaker Dean Cannon and other House representatives who have flipped and want to repeal the program.

The Merritt Island Republican says the Senate has "no interest whatsoever" in scrapping the mandate for the database already in state law.

He should use his sway in Tallahassee to get it up and running soon so the fight against the prescription drug scourge that's badly harming families and communities can be harder fought.



Feeling the Pain:

The Problem of Pill Mills in Florida's Cities

by Kenneth D. Pratt

Traveling down any major highway in Florida, drivers are likely to see large billboard advertisements containing slogans such as "Got Pain?" Over the past several years, Floridians have been inundated with many similar television and print advertisements. These ads are directed toward the illegal interstate and intrastate markets seeking controlled-substance prescription drugs in Florida. Unfortunately, our state has attained the dubious nationwide reputation of being a haven for people seeking to illegally obtain large quantities of prescription drugs from pain clinics.

The Problem with Pain Clinics

Disreputable pain clinics, or pill mills, don't operate in the traditional manner of medical offices or clinics. In normal clinic facilities, assessment or diagnosis is conducted on-site, but patients are required to fill prescriptions at a licensed pharmacy in another location. However, pill mills conduct both the diagnosis and the prescription filling at the same location.

The proliferation of pill mills in heavily populated urban areas has created public health and safety problems for city residents. Broward County has had such an increase in pill mills that it convened a special grand jury to study the problem in South Florida. Among other troubling statistics, the grand jury reported that in less than two years the number of pain clinics in the area rose from four to 175. Major problems have arisen along with the rapidly rising number of pill mills. Clients seeking pain medications often line up

for several blocks for appointments, at all times of the day and night. Adding to the density problem, many of the clinics operate near other pill mills, causing parking spillover into adjacent areas, including residential neighborhoods.

The burden for law enforcement to ensure public safety in areas where pill mills are located has also significantly increased. City officials in Broward County claim that there is a spike in the number of phone calls from concerned residents to local law enforcement regarding areas where pill mills are present. One of those small cities in Broward County attributes one homicide, 714 arrests, 95 vehicles seized, and an overall increase in street-level prescription drug trafficking, burglaries, robberies, identity theft, loitering, littering and other nuisances to the large number of pain clinics within the city's limits.

However, the problem of pain clinics goes beyond city limits. Statistics presented by the Florida Medical Examiners Commission point out that pill mills are also a public health problem of massive proportions for the entire state. In 2009, there were 8,653 drug-related deaths in Florida. Of those deaths, 79 percent involved prescription drugs such as Oxycodone, Xanax and Valium. Oxycodone is reported as the deadliest drug in Hendry, Lee, Glades and Collier counties. The most staggering statistic from the Florida Medical Examiners Commission report is that every day, seven Floridians die of prescription drug overdose. This statistic doesn't even reflect the deaths of people in other states that are related to prescription drugs obtained illegally through Florida's pill mills.

Finding a Solution

The Florida Legislature sought to address this epidemic during its 2010 legislative session by passing legislation to regulate the operation of pill mills and create a computer tracking database. The bill received unanimous legislative approval. However, several snags in putting the pill-mills laws into effect have caused many advocates of the law to question when there will be an end to the pains caused by these clinics.

Legal Challenges

Shortly after its passage in May 2010, doctor advocacy groups warned that the new pill-mills law was overly broad and that a lawsuit would be forthcoming. In September, a Florida company that operates several pill mills filed a lawsuit in federal court claiming that the two owners' constitutional rights were violated by the new laws. The lawsuit contends that the regulations violate their First Amendment rights by placing constraints on the manner in which pill mills may advertise.

While some advocates of the law scoff at the notion that it violates free speech, if a court found the law to be in violation of the First Amendment, it would face strict scrutiny under the judicial review standards. Ironically, the company's legal challenge has also been stalled for the moment because there is no actual live case or controversy for the court to consider. Once regulations are actually imposed, the suit would then become a live controversy that would allow the owners' case to proceed.

Database Funding

In addition to regulation, the 2010 pill-mills legislation also required the development of a computer database. The new law requires that Florida create and maintain a database where prescription-drug dispensers would be required to log every prescription for certain pain drugs.

This provision would allow doctors and law enforcement officials to track patients engaging in "doctor shopping." For example, a doctor in Orange County would be able to determine that pain medication had already been prescribed to "Patient John Doe" in nearby Seminole County and could alert law enforcement officials of the illegal behavior. This would also act as an investigative tool to allow for faster capture of criminals engaging in doctor shopping. The operational cost of the database is estimated to be \$500,000 in the first year and then at least \$350,000 to keep it running through June 2011. The cost for creation and operation of the database is more disturbing news for state legislators during a year in which budget deficits have been estimated at around \$3.5 billion.

More Legal Challenges

In order to implement the computer database requirement, the state put out bid requests. The contract to build the database was won by an Alabama-based company. However, shortly after the award was announced, a lawsuit was filed by an Ohio-based competitor, challenging the process by which the contract winner was determined. If the presiding judge were to grant an injunction motion to stay the building of the

database until the matter is resolved, the court battle could also place an indefinite stall on the creation of a much-needed tool in the regulation of prescription drug abuse.

Officials have been hard at work looking to raise the necessary funds from private donors such as pharmaceutical firms and other various Florida companies and foundations. The Governor's Office of Drug Control has previously reported that \$500,000 in grants has already been obtained.

Two solutions have been offered by the Florida Society of Pain Management, a group representing Florida's pain clinics. The society has proposed that the Legislature impose a one-half cent surcharge on each filled prescription or a fee, both to be paid by pain clinics. That cost could ultimately be passed down to all pain-clinic patients. A second solution offered up by the group to cover the costs of the computer database would be for the state to apply to receive federal funding.

However, in order to qualify for matching dollars, the Legislature would have to approve two additional reporting changes to the pill-mills law. Currently, pain clinics are allowed 15 days to report the filling of each prescription. To receive federal funds, that reporting window would have to be narrowed to seven or fewer days. Second, Florida law would have to be amended to provide a requirement that the information from the computer database shall be shared with other states. This information sharing will further enhance law enforcement's capability to cut down on interstate drug trafficking.

Agency Rulemaking Authority

A new law regarding agency rulemaking is another one of the reasons for Florida's continued lag in imposing regulation. During the November 16, 2010, special legislative session, the Legislature overrode Gov. Charlie Crist's veto of House Bill 1565, a law relating to the authority of state agencies to develop certain rules. HB 1565 provides that any new agency rules that have a fiscal impact of more than \$1 million over five years must be approved by the Legislature.

Florida's new pill-mill rules were developed by the Florida Department of Health and drafted by the Florida Society

The approval of thorough regulations and the funding of an adequate computer database are the key elements to shutting down the illegal pill-mills industry in Florida.

Continued on page 33. ▶

2011 LEGISLATIVE PRIORITIES!

policy throughout the Florida statutes. Unfortunately, the committee determined that while Florida had a number of laudable energy “goals” in place, there was not a comprehensive and cohesive energy policy for the state. To further exacerbate the problem, due to the lagging state economy, most of these energy-related grants, loans and programs were not funded by the 2010 Legislature. The Legislature also failed to ratify the Public Service Commission-proposed renewable portfolio standard, so currently there is no requirement that a minimum amount of renewable energy be used by utilities in Florida.

The state has taken positive action in two areas relating to energy. First, with the help of a federal grant program, Florida created the Energy Star Appliance Rebate Program, which handed out \$17 million in rebates to offset the purchase price of new, energy-efficient appliances. Second, the 2010 Legislature expanded the provisions of a law dealing with an expedited permitting process for renewable energy, biofuel facilities and feedstock production. The new law enhances coordination between state agencies and local governments, should the local government elect to utilize the expedited permitting process, and consolidates the administrative hearing process related to the siting of such facilities. There is little information available at this time as to how this expedited permitting for the siting of renewable energy facilities is working.

The absence of a concise and comprehensive statewide energy policy sends mixed signals to investors looking to enhance alternative and clean energy opportunities in Florida. Meanwhile, cities across the state have moved forward. Many cities have adopted policies encouraging “green” building in both the public and private sectors, implementing transit-oriented development policies, increasing the use of alternative and clean energy sources, and offering incentives to green industries that want to locate within a municipal boundary. Cities are sending clear signals to the marketplace that they are willing and able to make a commitment to encourage the growth of industry and jobs related to these new energy sources.

What is also clear is that businesses and investors are keenly interested in economic development related to green technologies. At the national level, venture capitalists sank \$740 million into biofuel firms in 2006, compared to \$111 million in 2005. The broader advanced energy technology sector attracted \$2.9 billion in venture capital in 2006, outstripping even federal appropriations of \$2.7 billion in fiscal year 2008.

Investors in alternative energy sources have a unique opportunity as the industry develops in Florida. The Florida Legislature must send clear signals to the marketplace that it is making a firm commitment to encouraging these energy sources and the accompanying growth in jobs and technologies.

Scott Dudley is associate director of legislative affairs for the Florida League of Cities.

Pill Mill – Continued from page 31.

of Interventional Pain Physicians over an 18-month period. The rules were scheduled to go into effect for most clinics on November 28, 2010, but did not because of HB 1565 and its new requirements. At a December 3, 2010, meeting, the Florida Board of Medicine was forced to delay the rules implementation until after an enhanced economical analysis of the rule has been completed. The rules must also meet the approval of a new agency created by Gov. Rick Scott. Just moments after his inauguration on January 4, 2011, Scott signed Executive Order No. 11-01 creating the Office of Fiscal Accountability and Regulatory Reform. The order also immediately suspends all rulemaking for any agencies under the governor’s executive authority. The effect of the order places the newly created agency on a very tight deadline. The Legislature will only be able to take up the rules during its upcoming session if they are approved by Scott’s office by February 4, 2011. If the governor’s office fails to meet that deadline, enacting pill-mills regulation would likely be delayed until 2012.

Some Relief for Cities

Several Florida cities have taken matters into their own hands by passing various types of city ordinances to restrict pill mill operations. Pursuant to their home-rule powers, some cities have enacted ordinances that confine pain clinic operation hours, restrict drug offenders from owning or operating pain clinics, and mandate the number of parking spaces based on the square footage of the building. While these regulations can be effective in discouraging the boom in the number of pill mills opened, diverse city ordinances do not provide standardized regulation or enforcement.

Advocacy Efforts

The likelihood that Florida will catch up to the rest of the nation in pill-mills regulation before March 2011 looks increasingly bleak. Unfortunately, pill mills will continue to operate their businesses as usual, without any licensure or other state regulation.

The Florida League of Cities will continue to stay in contact with potential bill sponsors in the Legislature and advocate on the importance of passing meaningful pill-mills regulation reform. The approval of thorough regulations and the funding of an adequate computer database are the key elements to shutting down the illegal pill-mills industry in Florida. However, each city leader is needed to call on Florida’s Legislature to provide the antidote for addressing this statewide epidemic and to put an end to the pain that these clinics cause Florida’s cities.

Visit the League’s Web site at www.flcities.com for continued updates on pill mills in Florida.

Kenneth D. Pratt is a legislative advocate for the Florida League of Cities.

ORDINANCE NO. 2010-32

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO PAIN CLINICS, PAIN MANAGEMENT CLINICS, AND CASH ONLY PHARMACIES, ENACTING A MORATORIUM ON THE ISSUANCE OF BUSINESS TAX RECEIPTS FOR THE OPERATION OF "PAIN CLINICS, PAIN MANAGEMENT CLINICS AND CASH ONLY PHARMACIES" IN THE TOWN OF MALABAR FOR A PERIOD OF ONE HUNDRED EIGHTY (180) DAYS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2, The Florida Constitution, and Chapter 166, Florida Statutes, Town of Malabar is authorized to protect the public health, safety, and welfare of its residents and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, protection of the public health, safety, and welfare is a legitimate public purpose recognized by the courts of Florida; and

WHEREAS, there has been a recent proliferation of Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies; and

WHEREAS, the Town of Malabar does not currently regulate Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies; and

WHEREAS, various studies and reports have been conducted concerning the Proliferation of Pain Clinics in Florida, and in 2008, prescription drugs were attributed to an average of nearly 13½ deaths per day in Florida; and

WHEREAS, the Town of Malabar has received applications for Pain Management Centers and Cash Only Pharmacies as defined herein; and

WHEREAS, reports have found that in the areas where Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies are located, burglaries, robberies, drug trafficking in prescription drugs, street level sales of prescription drugs, identity theft, and organized criminal activities have all increased; and

WHEREAS, Section 893.055, Florida Statutes, establishes the Prescription Monitoring Program in Florida, which is designed to provide a comprehensive electronic database system of controlled substance prescriptions; however, the program does not go into effect until December 1, 2010; and

WHEREAS, the Town Council of the Town of Malabar believes that by establishing a moratorium for a period of one hundred eighty (180) days on the issuance of Business Tax Receipts for Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies in the Town of Malabar, the Town Council will have the opportunity to research the nature and scope of possible measures of mitigation and regulation of Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies; and

WHEREAS, the Town Council of the Town of Malabar deems it in the best interests of the Town to enact an Ordinance regulating Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies, and their impacts on the community.

NOW, THEREFORE, BE IT ENACTED by the Town of Malabar, Florida as follows:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and incorporated herein by reference.

Section 2. For the purposes of this Ordinance, "Pain Clinics" and "Pain Management Clinics" shall mean any clinic, medical office, or medical practitioner's office that is not affiliated with a hospital, hospice, or other facility for the treatment of the terminally ill and having at least one (1) of the following criteria:

- a. The primary business purpose of such clinic, medical office, or medical practitioner's office is to prescribe or dispense pain medication, identified in Schedules II, III, and IV in Sections 893.03, 893.035, and 893.0355, Florida Statutes, such as, but not limited to, opioids, including fentanyl, hydrocodone, morphine, and oxycodone, to individuals; or
- b. The clinic, medical office, or medical practitioner's office holds itself out through advertising as being in business to prescribe such pain medication, as described in subsection a. of the criteria above, and which may or may not provide dispensing of pain medication on site.

Section 3. For the purposes of this Ordinance, a "Cash Only Pharmacy" shall

mean a pharmacy that primarily dispenses medication in Schedule II, III, and IV in Sections 893.03, 893.035, and 893.0355, Florida Statutes, including but not limited to opioids, including fentanyl, hydrocodone, morphine, and oxycodone, to individuals for cash only and/or is not generally open and accessible to the general public.

Section 4. Applications for Business Tax Receipts for the operation of Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies, as defined herein, received after the effective date of this Ordinance shall be held in abeyance until the expiration of the moratorium period.

Section 5. The emergency moratorium shall not affect any business currently operating within the Town of Malabar pursuant to a validly-issued Business Tax Receipt, as long as the business and property are in compliance with all applicable local, state, and federal laws.

Section 6. Notwithstanding the time limit on the moratorium herein established, in the event that the Town Council of the Town of Malabar finds that additional time is needed for staff to conclude their review of the problems and issues associated with Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies, as defined herein, and to draft regulations of those businesses, then the term of their moratorium may be extended for an additional one hundred eighty (180) day period by subsequent Ordinance.

Section 7. SEVERABILITY.

If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstance(s), such determine shall not affect the applicability hereof to any other individual, group, entity, property, or circumstance.

Section 8. EFFECTIVE DATE.

This ordinance shall become effective immediately upon its adoption after the second reading and public hearing.

This ordinance was moved for adoption by Council Member Rivet and was seconded by Council Member BORTON and, upon being put to a vote, the vote was as follows:

Council Member Nancy Borton	Aye
Council Member Brian Vail	Aye
Council Member Steven (Steve) Rivet	Aye
Council Member Jeffrey (Jeff) McKnight	Aye
Council Member Marisa Acquaviva	Aye

This ordinance was then declared to be duly passed and adopted this 16th day of August, 2010.

TOWN OF MALABAR

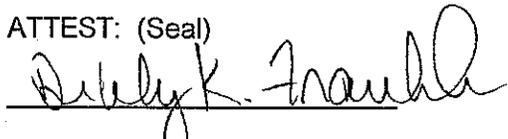


By Thomas M. Eschenberg, Chair

First Reading: 8/02/2010

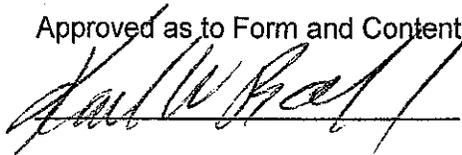
Second Reading: 8/16/2010

ATTEST: (Seal)



Debby K. Franklin, Town Clerk/Treasurer

Approved as to Form and Content:



Karl W. Bohne, Jr., Town Attorney

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: April 27, 2011

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

SUBJECT: Setbacks in RR-65

BACKGROUND/HISTORY:

At the RTCM of March 21, 2011, the Mayor had submitted an Agenda report and sketches showing the area of a yard in RR-65. The Mayor used Article V as his reference.

There is a contradiction between the information in Article V and the information in Article III and the Table in Article III. Town staff provides the information from Article III to applicants wishing to pull a permit. Article III, with the definitions and the Tables provide all the information on zoning, size and dimension criteria and density that applicants consistently ask about.

I have also attached the memo I gave to Council on March 21 and the attachments showing this discrepancy was brought to Council attention in 1998. There are many similar issues we have come across in the Code. At the time and in subsequent times we have brought some of these issues to Council's attention.

As I state in my memo, our Code has served the residents of Malabar very well in keeping the rural lifestyle in place. From time to time it may be helpful to correct some of these contradictions.

There was no motion from Council on this issue at the RTCM of March 21, 2011. There was general consensus to allow it to go to P&Z for review and consideration.

ATTACHMENTS:

Mayor Eschenberg' Agenda Report and sketches dated March 21, 2011
Clerk's memo dated March 17, 2011 with attachments
Table 1-3.3 showing setback info, Footnote 2 re: setbacks, and Table 1-3.3(E)

ACTION OPTIONS:

Recommendation to Council to proceed with Mayor's proposed changes to setbacks or keep existing setbacks

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO. 9

Meeting Date: March 21, 2011

Prepared By: Tom Eschenberg, Mayor

SUBJECT: SETBACKS

BACKGROUND:

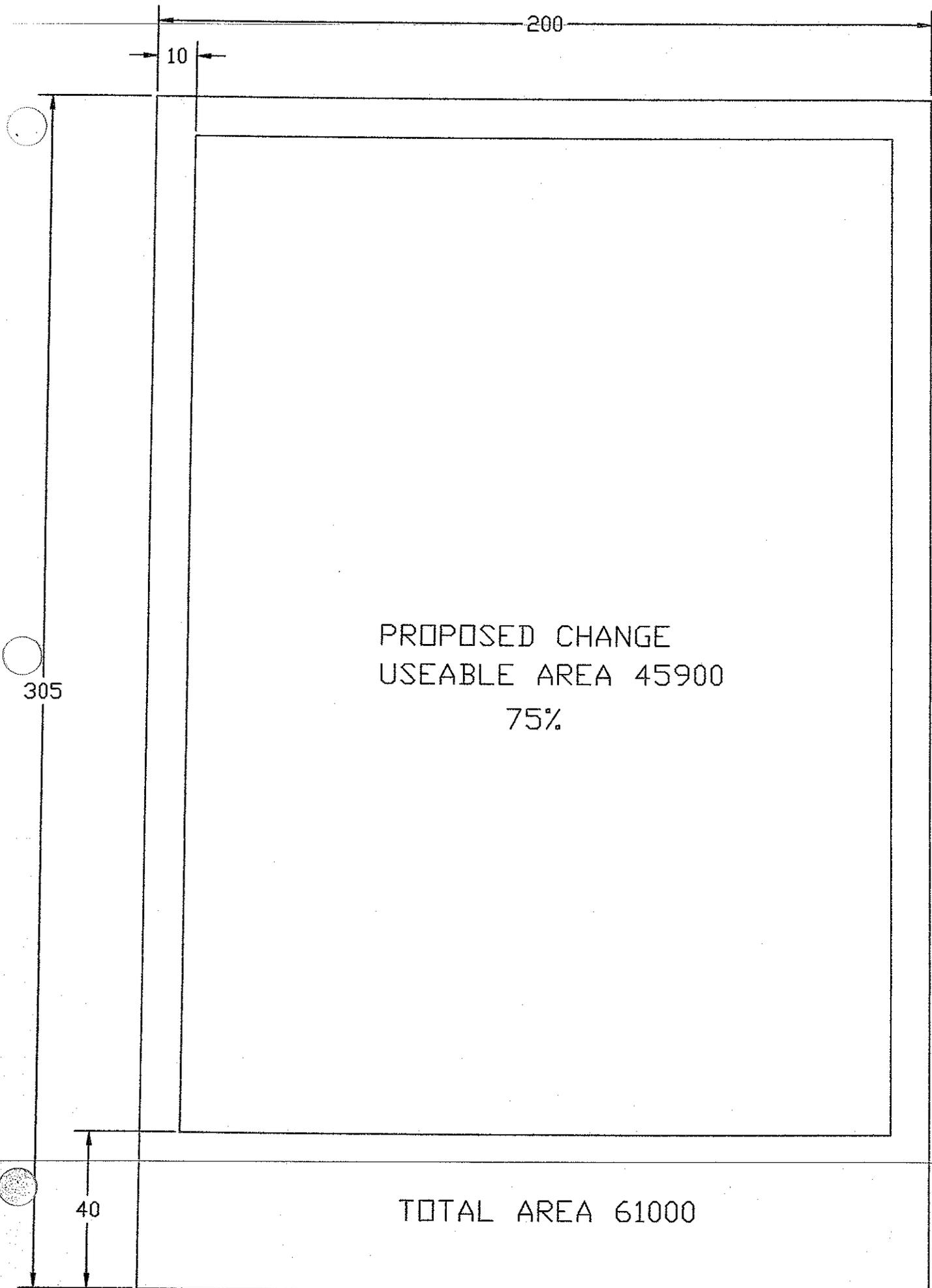
The current code is very restrictive by not allowing landowners the full use of their property. Referring to the sketch of the current code, a property owner in RR65 is allowed to use just a little over half of their property. The code measures the front setback from the center of the right of way. I have shown 40 feet from the front property line which is a more normal setback. People in RR65 usually do not build their houses 15 feet from the road. Homebuilders should be made aware that the further they set back the front of the house, the more land use they are giving up. The sketch is of a typical 1.4 acre lot in RR65. I am proposing a change in the code to 10 foot, side and rear setbacks. I cannot think of any justification for the 30 foot setback. It appears to be an unreasonable "taking" on the part of the town. The second sketch, while still restricting full use of land would be an improvement.

ATTACHMENTS:

Current and proposed setback sketches

ACTION REQUESTED:

Refer to Planning and Zoning for a recommendation on all residential setbacks.



200

10

305

PROPOSED CHANGE
USEABLE AREA 45900
75%

40

TOTAL AREA 61000

200

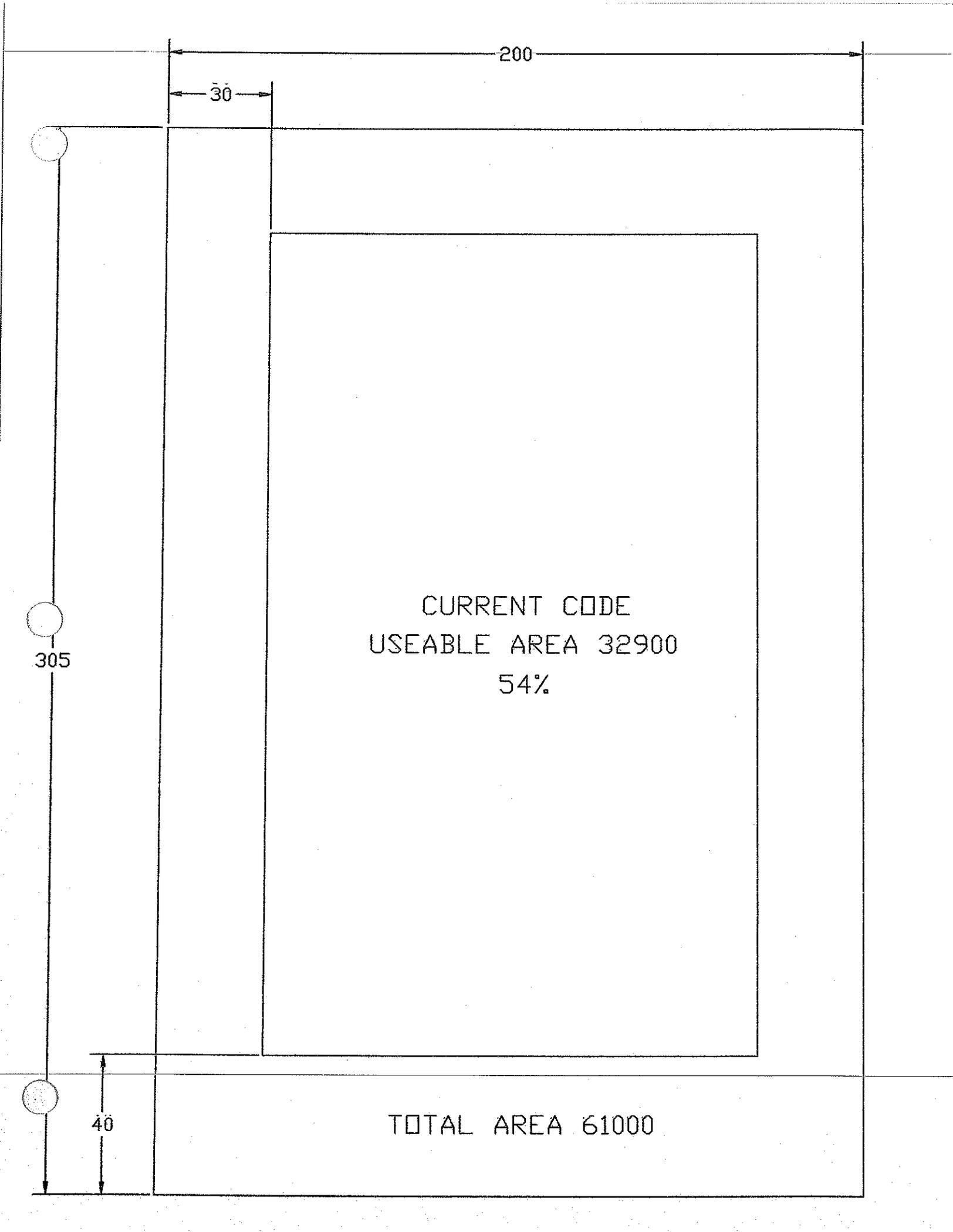
30

CURRENT CODE
USEABLE AREA 32900
54%

305

40

TOTAL AREA 61000





2725 Malabar Road
Malabar, FL 32950
321-727-7764 (Office) 321-722-2234 (Fax)
www.townofmalabar.org
townclerk@townofmalabar.org

MEMORANDUM

Date: March 17, 2011 2011-CT-048
To: Honorable Mayor Eschenberg
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: Agenda Item Discussion – Setbacks

The Mayor's reference to setbacks in Article V of the Land Development Code points out an example of the conflicts and contradictions within the Code. In 1998, the Municode Corp did a cursory review of our Code and pointed out this conflicting language. Later in 1998, the Malabar Code Revision Committee also discussed the contradiction in Article V regarding setbacks and assigned the Building Official and Attorney to resolve. No action came from that and the contradiction remains.

I point this out only to provide an opportunity to speak in defense of our Code. It has served Malabar very well over the years. Article III, District Provisions is probably the most referenced part of the Land Development Code as it provides the definitions for our zoning classifications, explains the maximum building coverage, lays out the lots size and dimension criteria and provides examples of allowable and conditional uses. There is not a day that goes by that we do not refer to that section of the Code.

Article V is used as a catch all for a variety of subjects related to the Land Development Code.

We acknowledge that the Code could use an updating, but feel it provides a good reference and guide to staff, developers and residents.

I have attached some documents for illustration purposes.

Municipal
Code
Corporation

RECEIVED JUN 10 1998

June 5, 1998



William P. Hall,
Town Administrator
Richard E. Torpy, Esq.
Town Attorney
2725 Malabar Road
Malabar, Florida 32950-4427

Re: Editorial and State Law Analysis of the Land
Development Code, Town of Malabar, Florida

Dear Messrs. Hall and Torpy:

Pursuant to the contract, I am enclosing the editorial and state law analysis prepared for the review and recommendation of the town staff. The analysis was prepared in the format contemplated under the contract. The Land Development Code as supplemented through ordinance number 97-5 adopted March 17, 1997 has been used as the basis for the analysis.

I would be more than happy to answer any questions and briefly discuss any matter regarding the analysis over the telephone. A more detailed explanation of the items in the analysis may be discussed at an editorial conference which may be scheduled to be held in the town.

Post Office Box 2235

1700 Capital Circle, S.W.

allahassee, FL 32316-2235

(850) 576-3171

1-800-262-CODE

Fax (850) 575-8852

*Copies
Council Mayor
VP + 2
Bids OFF
Committee
Torpy*

1-5.8

The reference to required side or rear yard as used in this section should be reviewed as fences, etc are not permitted in the required setbacks. The prohibiting of such fences, etc. over underground utilities should perhaps include any easements which may be used for such utilities.

↙ 1-5-10

This section on building setbacks should be reviewed as setbacks are in Table 1-3.3(A) and section 1-3.3(A) and (E).

1-5.13,
1-5.14

The sections on moving structures should probably be in building chapter of the Code of Ordinances as section 6-28 refers to damages to rights-of-way due to building activity.

1-5.15

This section on parking, storage, use, etc. of major recreational equipment should probably be in the Code of Ordinances as it is applicable to public and private property.

1-5.25
(12)

The reference in this section to child care facility if it meets the definition of family day care home in F.S. § 402.302 (7) should be reviewed with the state law cited which declares such family day care home a valid residential use.

F.S. §
166.0445

MALABAR CODE REVISION COMMITTEE

OBJECTIVES

REMOVE CONTRADICTIONS.

REMOVE OBSOLETE ORDINANCES.

SIMPLIFY ORDINANCES (LIMIT LEGAL TERMINOLOGY).

INDEX ORDINANCES.

COMPUTERIZE.

MALABAR CODE REVISION COMMITTEE

Council Member Tom Eschenberg		
Tel: (H) 724-1007	(W) 729-2944	Page: 690-3042
Town Counsel Rick Torpy		
Tel: (H) Unlisted	(W) 724-6262	Page: 456-4444
Town Building Inspector		
Tel: (H) ____-____	(W) ____-____	Page: ____-____
Code Enforcement Officer Dave Beaudry		
Tel: (H) 722-1924	(W) 983-8988	Page: 680-1137
P&Z Member Bob Wilbur		
Tel: (H) 723-7264	(W) ____-____	Page: ____-____
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Tel: (H) 725-9932	(W) 723-2946	Cell: 258-3618
Town Resident Gary Rasor		
Tel: (H) 722-2627	(W) 259-3811	Page: None
Town Resident Michael Roland		
Tel: (H) 723-0889	(W) 729-6770	Cell: 258-5270
Town Resident Bill Withers		
Tel: (H) 951-1599	(W) None	Page: None

DISTRICT PROVISIONS

§ 1-3.3

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

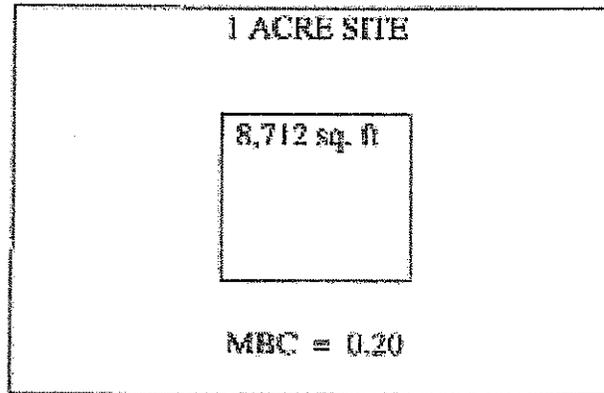
Zoning District	Minimum Lot (L)			Maximum Height (ft./stories)	Depth (ft.)	Minimum Living Area (sq. ft.)	Setback (ft.) ⁽¹⁾⁽²⁾			Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)				Front	Rear	Side (I)				
Rural Residential Development													
RR-65	65,340	150	250	35/3	1,500	40	30	30	30	20	N/A	80	0.66
Traditional Single Family Residential Development													
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	35	N/A	65	2.00
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	55	2.904
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4.00
Multiple Family Residential Development													
RM-4	5 Acres Minimum Site	200	200	35/3	1 Bedroom: 900 2 Bedroom: 1100 3 Bedroom: 1300 Each Additional Bedroom: 120	60	40	40	40	50	N/A	50	4.00
RM-6	5 acres Minimum Site	200	200	35/3	Single Family: Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	25	20	10	10	60	n/a	50	6
Mixed Use Development													
M/LC	20,000	100	150	35/3	Single Family: Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120 Commercial: Min. Area: 900 Max. Area 4,000	25	20	10	10	50	n/a	50	4
Mobile Home Residential Development													
R-MH	Site: 5 Acres Lot: 7000					10	8	8	10	50	N/A	50	6.00
Office Development													

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

Zoning District	Minimum Lot (L)			Maximum Height (ft./stories)	Minimum Living Area (sq. ft.)	Setback (ft./%)			Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (L)				
OI	20,000	100	150	35/3	Minimum Floor Area: 1000	35/50	25	20	35	20	35	N/A
Commercial Development												
CL	20,000	100	150	35/3	Minimum Floor Area: 900	60	25	10 ⁴ 15 ³	20	0.20	35	N/A
					Min. Area: 900 Max. Area: 4,000							
CC	20,000	100	150	35/3	Minimum Floor Area: 1200 Minimum Hotel/Motel Area: 300 Each Unit	50	25	20 ⁴ 15 ³	30	0.20	35	N/A
Industrial Development												
ND	20,000	100	150	35/3	Minimum Floor Area: 1200	50 100 ⁶	25 100 ⁶	20 100 ⁶	30 100 ⁶	0.42	30	N/A
Institutional Development												
NS	20,000	100	150	35/3	Minimum Floor Area: 1200	50	25	20	30	0.20 0.10 ⁶	40	N/A
Coastal Preservation												
CP	No Size or Dimension Standards Adopted											

¹ Minimum size sites and lots include one-half of adjacent public right-of-way.
² Minimum setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(E) whichever is most restrictive.
³ Setback where rear lot line abuts an alley.
⁴ Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such case the more restrictive abutting setback shall apply.
⁵ Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.
⁶ Recreation activities maximum FAR shall be .10.

FIGURE 1-3.3(D). MAXIMUM BUILDING COVERAGE ILLUSTRATION



Maximum building coverage for a MBC of 0.20 = 8,712 sq. ft.

$$\text{MBC} = \frac{\text{Total Building Coverage}}{\text{Total Lot Area}}$$

E. *Building Setbacks*. Table 1-3.3(A) provides building setbacks for conventional single family lots as well as for multiple family residential and nonresidential sites. In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way. The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar comprehensive plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.

TABLE 1-3.3(E). ADDITIONAL BUILDING SETBACKS FROM STREETS AND ROADS

<i>Transportation Facility</i>	<i>Building Setback (feet)</i>
Arterial Roadways (150 feet R/W)	100
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
Major Collector Streets (100 feet R/W)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
Local Streets (50—60 feet R/W)	65

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Meeting Date: April 27, 2011

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

SUBJECT: Establish Regulations for Internet Cafes

BACKGROUND/HISTORY:

The City of Palm Bay just recently went through a long process including legal action to clarify if a Palm Bay business that had rightfully received a business tax receipt to operate an internet café. Once issued, the City challenged it and they ultimately reached a agreement.

Internet cafes are becoming very popular all over Florida. Some are simple internet games of chance that dispense prizes but others offer cash payouts. There have been many operations raided and closed throughout Florida as gambling establishments and the customers did not even know they were breaking the law.

Staff would like to have regulations on the books before someone comes in to apply for such a use. Just as stated with the pain clinics, such a business could open up in an existing building without any requirement to come before P&Z or Council for approval. It would be classified under enclosed commercial entertainment.

ATTACHMENTS:

Articles on issue

ACTION OPTIONS:

Recommendation to Council to adopt regulations OR no action required

Gambling action questioned

Palm Bay's crackdown seems harsh

So Palm Bay Mayor John Mazziotti mobilized city police and state prosecutors on behalf of his favorite gambling hangout to take out a competing gambling spot down the road.

But only after the mayor hopped in a car with the owner of the Pirates Gold Arcade on Malabar Road and paid a little visit to the Tropical Dolphin Internet Café on Jupiter Boulevard, whose owners understandably felt intimidated by the confrontation in September 2009.

The moves smack of ward-boss politics.

You see, café owner Doreen Marceau operated a low-stakes online sweepstakes system that probably is legal in Florida, but worked differently from the low-stakes arcade gambling that Mazziotti and the city council had voted to permit in the city a year earlier.

At arcades, gamblers win gift cards they later spend like cash at local stores. By contrast, gamblers in online sweepstakes receive cash.

One call from the mayor and a visit from city code enforcement might have done the trick.

But thanks to Mazziotti's visit and calls to three top police officials, Marceau spent the past 18 months fighting criminal charges that could have sent her to prison for up to 10 years, investigative reporter Jeff Schweers found.

The whole episode concluded Monday with Marceau agreeing to a plea deal that calls for six months of probation and "deferred adjudication" for a misdemeanor charge.

But to me, it raises questions:

■ Did Mazziotti do anything corrupt in targeting that company?

■ What counts as gambling in our local cities anymore?

Improper actions?

Mazziotti told Schweers he has received no compensation or gifts from Pirates Gold owner John Coflin. FLORIDA TODAY has no on-the-record statements or other evidence that Mazziotti did anything corrupt.

"I've won gift cards," Mazziotti said. "No one has given me a gift of any kind playing there."

What would I consider corrupt?

If an arcade "comped" a politician tickets or credits to play the video games for free, and the politician won gift cards that he or she traded in for merchandise at a local retailer, and then the politician used his or her office to execute a big favor for the arcade, that would be corrupt. Really corrupt.

Court records show Palm Bay police have investigated whether Mazziotti used his elected position to strong-arm the café for personal gain.

But police Chief Doug Muldoon would not comment on the status or outcome of that, Schweers reports.

What's gambling?

But at the heart of the dispute, meanwhile, is heavy rationalization among local leaders about what counts as gambling.

Mazziotti seems to think that arcades don't count as gambling because players trade cash for game credits and, if they win, gift cards.

But make no mistake: Arcades are low-stakes gambling — same as bingo, same as wagering on a golf game, same as entering the office pool during the NCAA basketball tournament.

It's all gambling. If bumping a button on an arcade video game to make three symbols stop spinning amounts to a legal "game of skill" — not an illegal game of chance — then let's legalize roulette and dollar slots, too.

In Palm Bay, semantics led to an abuse of power that almost cost an entrepreneur her freedom. ■

Contact Reed at 321-242-3631 or mreed@floridatoday.com.

NO CONTEST Woman pleads 'no contest' in operation of Internet café in Palm Bay, 5B

Woman, 67, pleads no contest

BY JEFF SCHWEERS
FLORIDA TODAY

VIERA — A 67-year-old retiree pleaded "no contest" to a misdemeanor count of not properly advertising the online sweepstakes promotion she ran at her Internet café.

Under the terms of the plea agreement, Doreen Marceau will pay \$1,000 toward the city's investigative costs and serve six months of probation. She had faced up to 10 years in prison on felony gambling charges.

Marceau maintained she didn't do anything wrong and plans to apply to reopen her business.

"This is really the pits," Marceau said before she and her husband went to pay the fee and register with the probation office.

Palm Bay police began their investigation in 2009 after Mayor John Mazziotti called to complain Marceau was giving out cash prizes at the Tropical Dolphin Internet Café. He had visited the business with the owner of Pirate's Gold, an adult video arcade.

After a three-month undercover investigation, police shut down the business, froze Marceau's accounts and seized her equipment.

Based on public records, a FLORIDA TODAY article Monday detailed the investigation and how police also asked questions about Mazziotti's actions. The mayor denied any wrongdoing, and officials would not comment.

The city council since has approved an ordinance allowing Internet cafés. ■

Contact Schweers at 321-242-3668 or jschweers@floridatoday.com.

Judge to rule on Internet cafés

Status of controversial gaming center could be affected

By Dan Garcia
dgarcia@hometownnewsol.com

PALM BAY — City officials are awaiting the ruling by a federal judge in a Seminole County case that could affect the future of a flourishing Internet café that opened without a permit in Palm Bay.

City attorney James D. Stokes said the judge's ruling could affect the future of Internet cafes throughout Florida, depending on how the judge rules.

U.S. District Judge John Antoon is expected to rule on the case titled Allied Veterans of the World Inc. v. Seminole County.

The federal case arose after the Seminole County Board of County Commissioners enacted an ordinance "prohibiting the use of simulated gambling devices," essentially banning arcades, Internet cafes, sweepstake redemption

centers and simulated slot machines.

Such a ban, if adopted in other counties, could cripple the statewide operations of Internet cafes, which use the Internet to provide customers with simulated slot machines.

City officials in Palm Bay were awaiting the ruling by Judge Antoon, who issued a temporary restraining order preventing Seminole County from shutting down the Internet centers, pending the judge's ruling.

While Palm Bay awaited the judge's ruling, Rick Spyrison, who operates Rainforest Arcade on Minton Road, angrily told the City Council that Allied Veterans continues to have a huge advantage over local arcades because of extended operating hours, cash payouts and other factors.

"Shut them down!" Mr. Spyrison said sternly at the City Council meeting.

Mayor John Mazziotti said negotiations with the Internet café are not completed and the city and the café are still discussing terms of its operation.

Council members said they will attempt within two weeks to broaden the scope of the city's two other arcades to enable them to compete with the Internet café.

Council members discussed imposing new rules on Allied Veterans, including the removal of tinted windows to allow authorities to look inside, the requirement of a security guard to escort the company's bags of cash to the bank, and reducing the arcades' hours of operation.

Mr. Stokes said the future of Internet cafes — there are five in Brevard County — remains up in the air pending the judge's ruling. Even if a judge bans Internet

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Judge

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cafes, pre-existing facilities could be "grandfathered" into the ordinance.

"Seminole County enacted an ordinance which prohibited simulated gambling, which is kind of a round-about way of attacking these

places," Mr. Stokes said.

"Allied Veterans challenged it, saying it is a First Amendment issue. Seminole County did what we started to do (in Palm Bay) but we stopped, saying, 'You can do your sweepstakes, you just can't use the graphics that make it look like a slot machine,'" Mr. Stokes said.

Mr. Stokes said he believes

the Florida Legislature will eventually pass state laws regulating such Internet cafes.

Mr. Stokes said some bills are currently brewing in the legislature.

"Some bills would prohibit Internet cafes and some would allow them," Mr. Stokes said. "It will probably depend on which one gets a

groundswell."

City manager Lee Feldman said one issue to be ironed out is "the status of establishments that were there prior to the state law."

Allied Veterans opened in Palm Bay on Jan. 5 at the site of a former Blockbuster video store, despite city zoning laws that prohibit gaming establishments.

Palm Bay denied Allied Veterans a business license in January but the gaming center opened anyway on Malabar Road, saying it was not aware of the denial.

Allied Veterans operates about 35 Internet-based centers in Florida, including two in Melbourne, one in Merritt Island and one in Rockledge.