

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
SPECIAL MEETING
WEDNESDAY DECEMBER 29, 2014
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE
- B. ROLL CALL
- C. PUBLIC HEARING:
 - 1. Development Agreement between the Town of Malabar and Kellwill, LLC as a condition for approval of Ordinance 2015-01 re: land use and zoning change for a portion of Parcel 28-38-31-00-00750 aka 1300 Highway 1, Malabar, FL 32950 Lying on the WEST side of Highway 1.
 - Exhibit: Agenda Report No. 1
 - Recommendation: Action to Council
- D. PUBLIC:
- E. 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
SPECIAL MEETING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: December 29, 2014

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

SUBJECT: Development Agreement between the Town of Malabar and Kellwill, LLC as a condition for approval of Ordinance 2015-01 re: land use and zoning change for a portion of Parcel 28-38-31-00-00750 aka 1300 Highway 1, Malabar, FL 32950 Lying on the WEST side of Highway 1.

BACKGROUND/HISTORY:

At the Town Council meeting of 12/15/14 Council passed Ordinance 2015-01 on its first reading. Town Council attached a proviso that before it comes back to them for the advertised Public Hearing on January 5, 2015 that a Development Agreement be drafted.

In order to comply with F.S. 163.3225 two Public Hearings must be held. One of those hearings may be in front of P&Z.

ATTACHMENTS:

- Memo #2014-TC/T- 046 From Debby Franklin, Town Clerk Treasurer
- Development Agreement
- Legal Advertisement
- Addresses that Legal Notice were

ACTION OPTIONS:

Recommendation to Council

TOWN OF MALABAR

MEMORANDUM

Date: December 23, 2014 2014-TC/T-046
To: Denine Sherear and Planning and Zoning Board
From: Debby Franklin, Town Clerk / Treasurer
Ref: Council Request

At the Town Council meeting of 12/15/2014 Council passed Ordinance 2015-01 on its first reading. They attached a proviso that before it come back to them for the advertised Public Hearing on January 5, 2015 that a Development Agreement be drafted.

Town Attorney Karl Bohne drafted one the following day and sent it to the applicant. With the applicant's approval we called Attorney Bohne and asked how to proceed. He advised if P&Z Board had a publicly noticed special meeting on a date prior to January 5, Council could go forward with Public Hearings on both the Development Agreement and approval of Ordinance 2015-01.

The Development Agreement must be reviewed by P&Z Board before the Council can act on it. This was legally advertised in the Florida Today two times (December 18 and 25). A separate notice was sent to all the property owners within a 500 foot radius. This is in addition to the notice sent to them regarding the Land Use and Zoning change request. The notice was also placed on the Town's website.

The Mayor said he could support the applicant's request for a land use map and zoning map change if there is a Development Agreement in place before the Ordinance 2015-01 is voted on.

The minutes are not ready at this time but here is the motion and vote.

MOTION: CM Korn / CM Vail to approve the P&Z Board's recommendation to approve the first reading of Ordinance 2015-01 changing the land use and zoning per applicant's request with the proviso that prior to the second reading a Development Agreement is offered by the applicant and approved by Council.

Discussion: Attorney Bohne said he knew what the P&Z Board's concerns were and also Council's and could draft one up easily. Council consensus to do that.

ROLL CALL VOTE: CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye; CM Ball, Aye. Motion carried 4 to 1.

Development Agreement

This Agreement made this _____ day of _____ 20____ (regardless of when signed) by and between the TOWN OF MALABAR, a Florida Municipal Corporation located at 2725 Malabar Road, Florida 32950, (hereinafter the Town) and KELLWILL, LLC, a Florida Limited Liability Company located at 5110 S. U.S. Highway 1, Grant-Valkaria, Florida 32949 (hereinafter Owner).

WHEREAS, the Owner desires to develop certain property in the Town more particularly described in Exhibit A (the Property); and,

WHEREAS, Chapter 163 of the Florida Statutes, establishes the Florida Local Government Development Agreement Act, which authorizes local governments to enter into development agreements with any person having a legal or equitable interest in real property located within its jurisdiction; however, this Agreement is entered into in accordance with the City's Home Rule Power as set forth in Chapter 166, Florida Statutes, and not pursuant to the optional Florida Government Development Agreement Act with certain provisions of chapter 163 being incorporated herein; and,

WHEREAS, the Owner is desirous of voluntarily entering into this Agreement; and,

WHEREAS, the Town is desirous of entering into this Agreement because it will promote the public health, safety and welfare of the community; and,

WHEREAS, the Owner has applied to the Town for a Comprehensive Land Use Plan Amendment and Rezoning of the Property and has agreed to use conditions applicable to the Property; and,

WHEREAS, in addition to all applicable requirements of the Town's Code of Ordinances, the Owner agrees to conform the development of the property with the provisions of this agreement; and,

WHEREAS, the Town and Owner acknowledge that this Agreement is binding upon the Town and Owner, and their respective successors and assigns for the term of this Agreement.

NOW THEREFORE in consideration of \$10.00 dollars and other good valuable consideration, the sufficiency and receipt of which are acknowledged the parties agree as follows;

1. **RECITALS.** The above recitals are true and correct and are deemed integral part of this Agreement.

2. **PROVISIONS OF F.S. 163.3227 ADOPTED.** The following provisions of F.S.163.3227 are adopted by the parties:

(a) A legal description of the land subject to the agreement, and the names of its legal and equitable owners: Attached as Exhibit A;

(b) The duration of the agreement: 30 years unless extended by mutual consent of the Town and Owner (FS 163.3229);

(c) The development uses permitted on the land are those as established by Table 1-3.2 COMMERCIAL ACTIVITIES for the CG zoning district, except Adult Activities, Bars and Lounges and Arcade Amusement Centers/Electronic Gaming Establishments by mutual voluntary agreement will not be an allowable use for the Property;

(d) Public facilities that will service the development include Town Fire Department, Brevard County Sheriff's Office, solid waste disposal as provided by the Town Solid Waste Franchise, Palm Bay Hospital and utilities;

(e) There is no reservation or dedication of land for public purposes;

(f) Local development permits approved or needed to be approved for the development of the land are as required by Town code and outside agencies;

(g) The development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;

(h) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; See (c) above; and

(i) The failure of this agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.

3. **BINDING EFFECT.** This Agreement and the provisions hereof shall run with and bind the property in Exhibit "A" or any portion thereof and the heirs, successors and assigns of each party.

4. **NOTICES.** Any notices to the Owner or the Town under the provisions of this Agreement shall be deemed to be properly sent when personally delivered or mailed, postage pre-paid, to the address of the said party above.

5. **ENFORCEMENT.** The enforcement of this Agreement may be by the Town and may be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any provisions hereof, either to restrain a violation or recover damages, and failure to enforce any covenant or provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6. **ATTORNEY FEES.** In the event that any party hereto brings legal action to enforce the provisions of this Agreement the prevailing party shall be entitled to an award of reasonable attorneys fees to be fixed by the court together with costs of the action and the right to attorneys fees and costs shall also extend to any appellate proceedings.

7. **RECORDATION.** This Agreement shall become effective upon its recordation in the public records of Brevard County, Florida and any amendment thereto shall become effective upon recordation in the public records of Brevard County, Florida.

8. **AMENDMENTS.** This Agreement shall not be amended, changed or added to unless an instrument reflecting such amendments changes or additions is signed by all parties to this Agreement.

IN WITNESS WHEREOF the parties have caused their respective duly authorized representatives to execute this instrument and to affix their corporate seals on the dates shown.

TOWN OF MALABAR

ATTEST:

Debby K. Franklin, CMC
Town Clerk/Treasurer

By: _____
Mayor Carl A. Beatty
Council Chair

(SEAL)

IN THE PRESENCE OF:

[Handwritten signatures]

Dennis M. Merian

KELLWILL, LLC:

By: *[Handwritten signature]*
William J. Carmine, it's Manager

State of Florida
County of Brevard

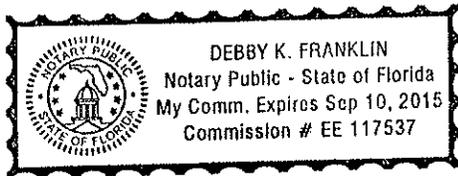
On this 17 day of Dec, 2014 before me appeared William Carmine to me personally known who being by me duly sworn did say that he executed the within instrument and did acknowledge the same to be the free act and deed of KELLWILL, LLC.

[Handwritten signature]

Notary Public

My commission expires:

Notary Stamp





Sent Via Email:kcicala@floridatoday.com

December 16, 2014

Kathy Cicala, Phone: 321-242-3832; FAX: 321-255-0350
Florida Today, Legal Advertising

Please place the following legal ad two (2) times on **December 18, and 25, 2014**.
Please put the heading in **BOLD** font. Please send proof to:

Thank you,

Debby Franklin

Debby K. Franklin
Town Clerk

TOWN OF MALABAR PUBLIC HEARING NOTICE

The Town of Malabar's Planning and Zoning Advisory Board will hold a Special Meeting for a Public Hearing on December 29, 2014 at 7:30PM in the Council chambers, 2725 Malabar Road to consider a Development Agreement between the Town and KellWill, LLC. Per F.S. 163 the Town is authorized to enter into a Development Agreement that will specifically detail that the property located on the west side of Highway 1 at 1300 Highway 1, aka Township 28, Range 38, Section 31, Parcel 750 will NOT be used for Adult Activities, Bars and Lounges and Arcade Amusement Centers/Electronic Gaming Establishments by mutual Agreement. KellWill, LLC. Intends to construct and operate a 10,000sf retail sales and service business that complies with all Code requirements, at this location, which is a permitted use in Commercial General. It will not exceed 35' in height and will comply with the Malabar Vernacular style detailed in the Town Code. The statute requires two (2) public hearings. There will be a second Public Hearing by Town Council on January 5, 2015, at 7:30PM in the Council chambers, 2725 Malabar Road, Malabar, FL so they can consider the Planning and Zoning Advisory Board's recommendation and approve or deny the Agreement.

A copy of the proposed Agreement is available for inspection by the public at the Town Clerk's Office between the hours of 8:30AM and 4:30PM weekdays. Interested persons are encouraged to appear at these hearings and provide comments regarding the proposed Agreement. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Clerk's Office, ADA Coordinator, 48 hours in advance of the meeting at 321-727-7764.

Debby K. Franklin, Town Clerk

If you received this notice then you are listed as a property owner, as shown in the records of Brevard County Property Appraiser's office, within 500' of the property identified in the agreement. This Notice is provided as required by F.S. 163.3225 and Malabar Land Development Code, Article XII, Section 1-12.2.E.8.

carmine500
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CARMINE, Willie

BILLIE, GEORGE SR TRUST
912 DARWIN LN NE
PALM BAY FL 32905-0000

BROWN, LOUISE E TRUSTEE
P O BOX 500151
MALABAR FL 32950-0151

CARMICHAEL, C RANDALL
609 ALDEN PLACE
MELBOURNE BCH FL 32951-0000

CARMINE LLC
P O BOX 600835
MALABAR FL 32950-0835

COCHRANE, PAULINE
COCHRANE, ROY H/W
P O BOX 500833
MALABAR FL 32950-0833

CURRI PROPERTIES LLC
2893 N HARBOR CITY BLVD
MELBOURNE FL 32935-6224

DEBELLAS, JOSEPH TRUSTEE
MARKS, ROBERT D
1100 BROOK ST NE
PALM BAY FL 32905-0000

DEVVRAT CORPORATION INC
1360 HIGHWAY 1
MALABAR FL 32950-0000

EASTON, RICHARD
EASTON, MARY K H/W
8514 DAMASCUS DRIVE
PALM BEACH GARDENS FL 33418-0000

EDGER PROPERTIES LLC
1672 WEST HIBISCUS BLVD
MELBOURNE FL 32901-0000

FDG RAIL HOLDINGS 14 LLC
4601 TOUCHTON RD
JACKSONVILLE FL 32246-0000

FLORIDA EAST COAST RAILWAY LLC
7411 FULLERTON ST SUITE 300
JACKSONVILLE FL 32256-3629

FRANCO, HECTOR I
WIEHL, SAMANTHA SUSAN
1230 US HIGHWAY 1
MALABAR FL 32950-0000

KEMMLER, HANSEL C
KEMMLER, BARBARA B H/W
2785 MALABAR RD
MALABAR FL 32950-0000

KEMPFER'S FEED & SEED INC
2728 MALABAR ROAD
MALABAR FL 32950-0000

KRIEGER, DONALD E
2345 LINEBERRY LANE
MALABAR FL 32950-0000

LINNELL, MICHAEL L
DOUGLAS, CONNIE S H/W
2275 GRANT RD
GRANT FL 32949-8104

MALABAR, TOWN OF
2725 MALABAR RD
MALABAR FL 32950-0000

MALABAR, TOWN OF
1803 AIRPORT BLVD
MELBOURNE FL 32901-0000

MARSHALL, JIMMIE A TRUSTEE
P O BOX 500176
MALABAR FL 32950-0176

MARSHALL, LORRAINE LIFE ESTATE
P O BOX 500031
MALABAR FL 32950-0031

carmine500
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MASSINGILL, DANNY G
410 HIGHWAY 1
MALABAR FL 32950-0000

MILUCKY, JAMES J
1280 HIGHWAY 1
MALABAR FL 32950-0000

MILUCKY, JAMES J
SAYLORS, LEEANNE J H/W
1280 HIGHWAY 1
MALABAR FL 32950-0000

OLA PRIME PROPERTIES LLC
328 S PATRICK DRIVE
IDIAN HBR BCH FL 32937-0000

PROCTOR, DOUGLAS K
2460 MALABAR ROAD
MALABAR FL 32950-0000

QUINBY SNYDER LLC
608 B N US HIGHWAY 1
FORT PIERCE FL 34950-0000

RAY, DEANNE HUGGINS
P O BOX 500175
MALABAR FL 32950-0175

WIEHL, SAMANTHA S
1230 US HIGHWAY 1
MALABAR FL 32950-0000

WOOD, MELVIN C
WOOD, REBECCA
726 ROYAL PALM PL
VERO BEACH FL 32960-5140