



**TOWN OF MALABAR**

**PLANNING AND ZONING**

**AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2**  
**Meeting Date: February 24,2016**

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

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**SUBJECT: Review Site Plan for Commercial Development & make Recommendation to Council: Parcel 28-38-31-00-00750- aka 1300 Highway 1, Malabar, FL 32950; Route One Motor Sports**  
Applicant: KellWill, LLC, represented by Mr. William Carmine & Mr. Vaheed Teimouri, Engineer

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**BACKGROUND/HISTORY:**

**SEE ATTACHED PACKET**

**ACTION OPTIONS:**

Action to Council

# TOWN OF MALABAR

## MEMORANDUM

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**Date:** February 17, 2016 16-AABO-004

**To:** Planning & Zoning Board

**From:** Denine M. Sherear, Administrative Assistant to the Building official

**Ref:** Kellwill, LLC- Mr. Willy Carmine Applicant & Vaheed Teimouri, Engineer  
For Site Plan Application to build @1300 Highway 1, Malabar FL

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The Applicant KellWill, LLC , Mr. Willy Carmine along with his Engineer Mr. Vaheed Teimouri has applied for a Site Plan Review to move forward with a Commercial Business for the sale and repair of motorsports to be located at 1300 Highway 1, Malabar. The zoning is "CG" Commercial General.

There is 3.22 acres on this parcel.

Attached please find:

- Application for Site Plan
- Radius Package 500'/Mailing to Residents
- Gopher Tortoise Survey
- Property information
- Survey/Site Plan-Revised 2/17/2016 (Large folded plans)
- Building Plan (Large folded)
- Portion of Article III District Provisions
- Article VII Site Plan Review
- Sec 1-5.29- Malabar Vernacular
- Development Agreement
- Staff Comments

The Planning & Zoning Meeting is set for February 24, 2016 @7:30PM and the Council Meeting is set for March 7, 2016@7:30PM here at Town Hall 2725 Malabar Road, Malabar, FL 32950.



**TOWN OF MALABAR**  
 2725 Malabar Road, Malabar, Florida 32950  
 (321) 727-7764 Ext. 14  
 Fax # (321) 727-9997



**APPLICATION FOR NON-RESIDENTIAL SITE PLAN REVIEW**

Project Name: ROUTE ONE MOTOR SPORTS Date: 12-21-15

Developer Name: KELLWILL, LLC Telephone: \_\_\_\_\_

Mailing Address: 1300 US HWY 1 Fax: \_\_\_\_\_

City, State, Zip: MALABAR, FL. 32950 Cell: 321-626-1835

Name of Property Owner(s): KELLWILL, LLC Telephone: 321-626-1835

E- Mail Address: WILLY@ROUTE1MOTORSPORTS.COM

Mailing Address: 1300 US HWY 1 Fax: \_\_\_\_\_

City, State, Zip: MELBOURNE, FL. 32950 Cell: \_\_\_\_\_

Name of Engineer(s): TEIMOURI ASSOCIATES, INC. Telephone: 321-729-8582

Mailing Address: 32 E. NEW HAVEN AVE Fax: 321-729-8909

City, State, Zip: MELBOURNE, FL. 32901 Cell: 321-509-5422

Name of Architect(s): EDC, INC. Telephone: 321-727-2056

Mailing Address: 2115 PALM BAY ROAD #6

City, State, Zip: PALM BAY, FL. 32909 Cell: \_\_\_\_\_

Legal Description of Property Covered by Application:

Township: 28 Range: 38 Section: 31 Lot/Block: N/A Parcel: 760

Subdivision: \_\_\_\_\_ Tax Acct No.: 2850906

Other Legal: \_\_\_\_\_

Present Land Use Designation: COMMERCIAL Present Zoning Classification: GC

Zoning of abutting property: North: GC South: GC East: US1 West: RAILROAD

Existing and Proposed Use for Property: VACANT, MOTOR SPORTS SALES

AND SERVICE.

Gross acreage: 2.97 Net acreage: — Gross density: N/A

Setbacks: Required and Proposed: Front: 20' 100' 1167.7'; Rear: 25' 186.8'

Side: 20' 20' ; Side corner: 20' 0' 46.0'  
NORTH SOUTH

Flood Zone: X Per FEMA Flood Insurance Rate Map



SITE PLAN APPLICATION AND CHECKLIST

Site Acreages:

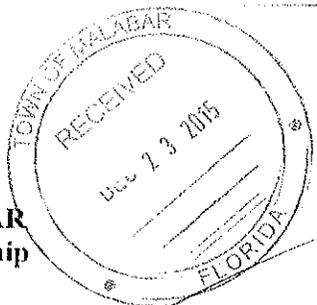
	SF	Acres	Percentage
Pervious	58,607	1.35	45.93%
Impervious	70,679	1.62	54.67%
Pond (WET)	0	0	0
Total	129,286	2.97	100.0%

Wetlands Present: NO Mitigation required? N/A Permit required? NO

The applicant is required to submit TWO original Site Plans with supporting documents, 10 TEN paper copies and ONE copy on CD ROM in Portable Document Format (PDF), including graphic and textual materials and support documents. The following information is required per Article VII of the Malabar Land Development Code and must be shown on the site plan (SP) or submitted as an addendum (AD) to the site plan. Please mark where the following information can be found:

- Landscape and irrigation plan (existing and proposed) shown on plans.
- Boundary of property shown by a heavy line.
- Access by means of paved dedicated right-of-way (driveway width).
- Topographic survey for existing and proposed conditions.
- Existing and proposed structures shown on site plan (including setbacks from all property lines and normal high water elevation and building separations).
- Typical front, rear and side elevations of proposed structure(s).
- All existing and proposed utilities (including inverts of pipes, etc)
- Location of all easements. N/A
- Fire protection, existing and proposed that meet state and local requirements.
- Proposed location of well.
- Proposed location of septic and drain field
- Stormwater management plan (including soils report and drainage calculations)
- Flood Zone(s) depicted on site plan. C-2
- Tree Location Survey identifying trees inches dbh and larger.
- Tree Plan prepared or approved by a Florida registered landscape architect.
- Required Open Space/Recreational areas. N/A

Updated 05/02/12



SITE PLAN APPLICATION AND CHECKLIST

TOWN OF MALABAR  
Disclosure of Ownership

Where the **property is not owned by the applicant**, a letter/letters must be attached giving the notarize consent of the owner/owners to the applicant to request a site plan review of the property.

Please complete ~~only one of the following:~~

~~I/we, \_\_\_\_\_, being first duly sworn, depose and say that I/we, am/are the **legal representative(s)** of the Owners or lessee of the property described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said are to be honest and true to the best of my/our knowledge and belief.~~

~~Applicant(s)~~

~~Date~~

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary public, State of Florida

Commission No. \_\_\_\_\_ My Commission Expires \_\_\_\_\_

Notary Signature

I/we, William Cerone, being first duly sworn depose and say that I/we, am/are **the Owner(s) of the property** described, which is the subject matter of this application; that all of the answers to the questions in said application, and all data and matter attached to and made a part of said application are honest and true to the best of my/our knowledge and belief.

William J. Cerone

Applicant(s)

Date

12/23/15

Sworn and subscribed before me this day 23 day of December, 2015

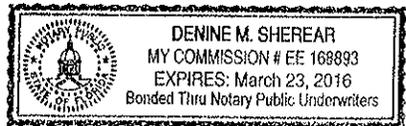
Notary Public, State of Florida

Commission No. EE 168893 My Commission Expires March 23, 2016

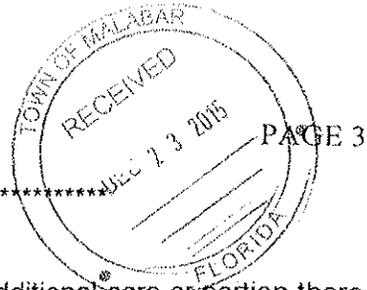
Denine M. Sherear

Notary Signature

Updated 05/02/12



SITE PLAN APPLICATION AND CHECKLIST



Site Plan Review - \$300 for the first acre plus \$50 per acre for each additional acre or portion thereof for projects consisting of 1,000 or more square feet of impervious surface; plus all costs, excluding advertising, administrative time, and mailing.

- Summary of Required Attachments for Site Plan Review:
  - Completed Application, including Disclosure of Ownership (Pages 1 and 2).
  - Radius Package for 500' distance from project site perimeter – obtained from the Brevard County Planning and Zoning GIS Department in Viera – call 321-633-2070 x52245
  - Fee of \$ 400.00, in **check or money order**, payable to the Town of Malabar.
  - Site Plan – (10) paper copies plus one electronic copy.
  - Reason for Site Plan Review (attach correspondence, drawings, etc.)
  - Copies of all Federal, State, and Local agency permits. **It shall be the applicant's responsibility to obtain such outside permits.**

Signature of Applicant(s):

*William J. Lomas*

Date:

12/23/15

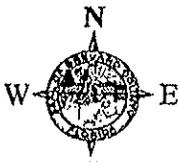
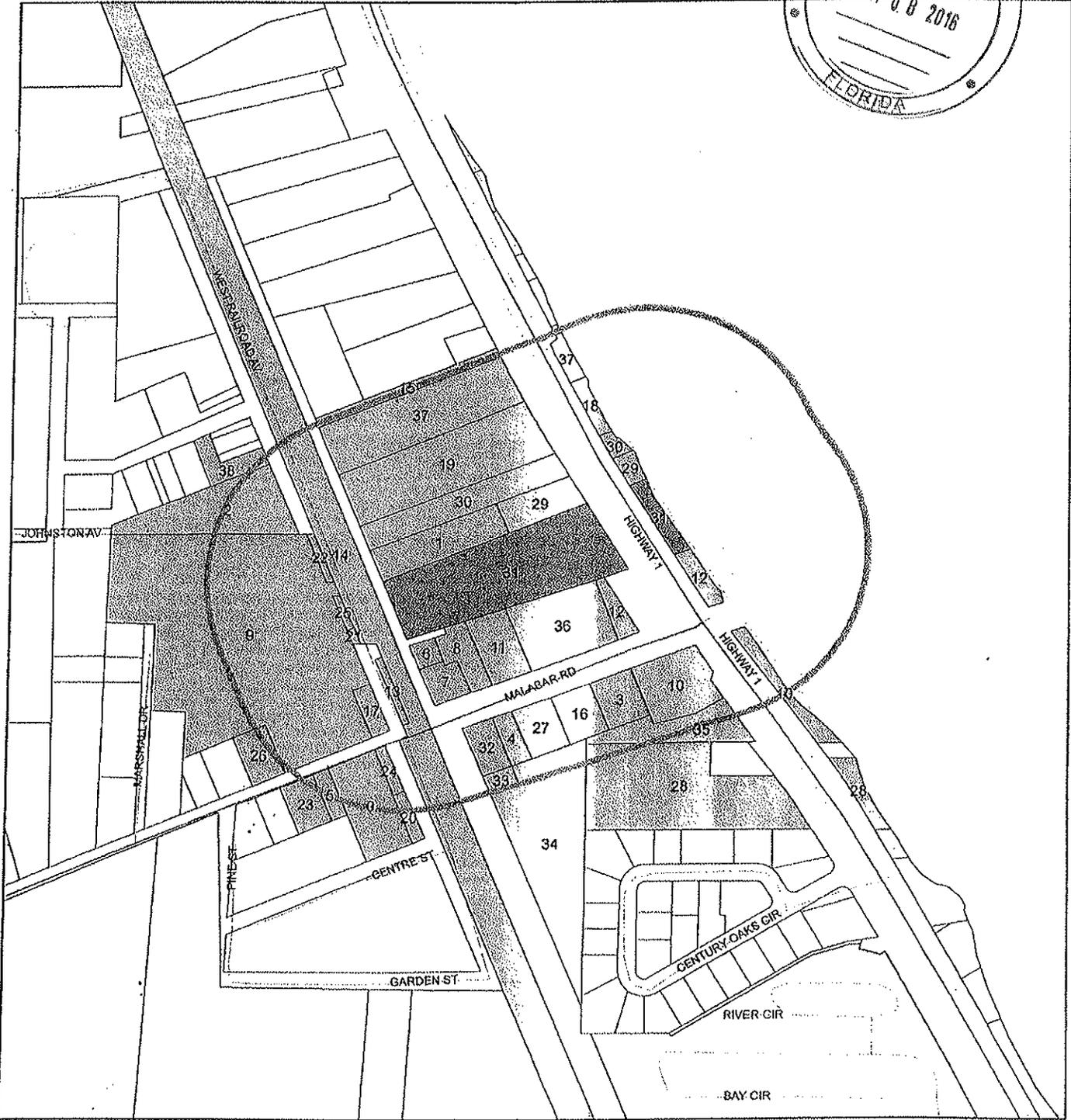
*Demario M. Shevior*

12/23/15

Signature of Town's Personnel

Updated 05/02/12

RADIUS MAP  
 NOLA PRIME PROPERTIES LLC  
 carmine500



1:4,800 or 1 inch = 400 feet  
 Buffer Distance: 500 feet

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does

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



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

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

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  
28 S PATRICK DRIVE  
DIAN 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



*Sent Via Email:brelegals@ gannett.com*

February 9, 2016

Please place the following legal ad two times on **Thursday, February 11 and February 25, 2016**. Please put the heading in **BOLD** font. This ad does NOT qualify for a discount. One affidavit is all that is required. Please send proof to: [TownClerk@TownofMalabar.org](mailto:TownClerk@TownofMalabar.org).

Thank you,  
Debby K. Franklin  
Town Clerk  
**TOWN OF MALABAR**

#### **NOTICE OF PUBLIC HEARINGS**

This is a Public Notice for two (2) Public Hearings. The Town of Malabar's Planning and Zoning Board will convene in the Town Hall, 2725 Malabar Road, Malabar, Florida on Wednesday, February 24, 2016 at 7:30 pm or as soon thereafter as the matter can be heard, for a public hearing on a request for Site Plan Approval for a Commercial Retail Sales and Service Development known as Route One Motorsports at 1300 Highway 1, Malabar, Township 28S, Range 38E, Section 31, Lot 750, 2.97 acres west of Highway 1, in CG, Commercial General Zoning and Flood Zone X. Applicant William Carmine, KellWell, LLC, represented by engineering firm of Teimouri and Associates, Inc. Malabar Town Council will then consider the Applicant's request and the Planning and Zoning Board's recommendation at a Public Hearing scheduled for March 7, 2016 at 7:30 pm or as soon thereafter as the matter can be heard.

The proposed project site plan may be inspected 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 project. 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.

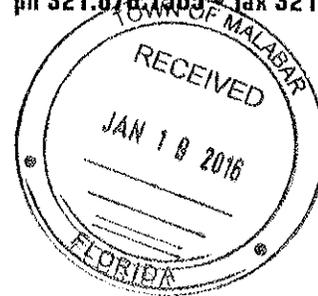
Debby K. Franklin, Town Clerk

**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 site plan. This Notice is provided as required by F.S. 163.3225 and Malabar Land Development Code, Article XII, Section 1-12.2.E.8.**

May 14, 2015

Kellwill, LLC  
c/o Don Bo  
PO Box 587  
Grant, Florida 32949

Re: Gopher Tortoise Survey  
Parcel # 28-38-31-00-00750.0-0000.00  
1300 Highway 1  
Malabar, Florida  
AES File No. 1563



Dear Mr. Bo:

Atlantic Environmental Solutions, Inc. (AES) has completed a habitat assessment and gopher tortoise survey on the above-referenced ±3.22 acre property located at 1300 US Highway 1 in Malabar, Florida. The site survey was completed on May 14, 2015. Following is a summary of our findings.

AES conducted a habitat assessment and formal gopher tortoise survey of the proposed clearing area of the subject property using protocol accepted by FWC. AES surveyed 100 percent of the proposed clearing area and no tortoise burrows or evidence of tortoise usage (tracks, scat, etc.) were located. On-site vegetation is dominated by live oak, cabbage palm, hickory, ragweed, Spanish needles, Johnsongrass, and opportunistic weedy species. The site is comprised solely of uplands.

Since no potentially active tortoise burrows were located during our survey, no gopher tortoise permits will be required for site impacts. If you have any questions, or if we can be of additional service, please do not hesitate to contact our office.

Sincerely,



David G. Purkerson, MS, PWS  
Senior Ecologist

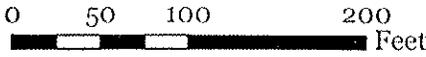


Jon H. Shepherd, MS, PWS  
President/Ecologist



**Project: Malabar 3.22 Acres**

**Figure 1: Aerial Map**

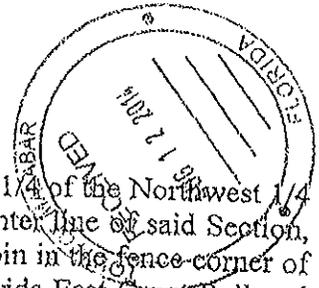


2014 Aerial, Brevard County, Florida



AES Proj 10/550

LEGAL DESCRIPTION  
Exhibit "A"



Beginning at old concrete post at the Southwest corner of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 31, Township 28 South, Range 38 East, thence along the center line of said Section, South 88 degrees and 50 minutes East a distance of 688 feet to an iron pin in the fence corner of the Northwest corner of the Farley property on the East side of the Florida East Coast Railroad right-of-way and 50 feet East of the center of the Southbound track of said railroad, thence Southerly along the East side of said railroad right-of-way a distance of 370 feet to an iron pin in the fence corner at the Southwest corner of the Farley property which point is the Place of Beginning, thence follow old fence approximately North 72 degrees and 30 minutes East a distance of 792 feet to concrete post on West shore of Indian River ("X" a Palm North 10 degrees East 8 feet and Palm North 40 degrees West 7.2 feet) thence continue on a straight line to the shore of the Indian River, thence follow the meanderings of the shore of the Indian River to point 200 feet Northwesterly from the above line, measured at right angles; thence Southwesterly parallel to said line of the Southeasterly side of the Farley tract and 200 feet distant therefrom to the fence on the East side of said railroad right-of-way at a concrete post, thence Southeasterly along the East side of said right-of-way to the Point of Beginning. Less and except road right-of-way for U.S. Highway No. 1 as presently exist, and LESS AND EXCEPT a right-of-way for East Railroad Avenue.

**Dana Blickley, CFA**  
**Property Appraiser**  
**Brevard County, FL**



## Property Details

### General Parcel Information

<b>Parcel ID:</b>	28-38-31-00-00750.0-0000.00	<b>Millage Code:</b>	34Z0	<b>Exemption:</b>		<b>Use Code:</b>	1000
<b>Site Address:</b>	1300 HIGHWAY 1 , MALABAR 32950					<b>Tax ID:</b>	2850966

Site Address is assigned by Brevard County Address Assignment for E-911 purposes and may not reflect the postal community name.

### Owner Information

<b>Owner Name:</b>	KELLWILL LLC
<b>Second Name:</b>	
<b>Mailing Address:</b>	P O BOX 587
<b>City, State, Zipcode:</b>	GRANT, FL 32949-0587

### Abbreviated Description

<b>Sub Name:</b>	PART OF LOTS 2,3 AS DES IN DB 287 PG 359 EX RD R/W
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### Value Summary

Roll Year:	2013	2014	2015
<b>Market Value Total:</b> <sup>1</sup>	\$204,480	\$204,480	\$210,480
<b>Agricultural Market Value:</b>	\$0	\$0	\$0
<b>Assessed Value Non-School:</b>	\$204,480	\$204,480	\$210,480
<b>Assessed Value School:</b>	\$204,480	\$204,480	\$210,480
<b>Homestead Exemption:</b> <sup>2</sup>	\$0	\$0	\$0
<b>Additional Homestead:</b> <sup>2</sup>	\$0	\$0	\$0
<b>Other Exemptions:</b> <sup>2</sup>	\$0	\$0	\$0
<b>Taxable Value Non-School:</b> <sup>3</sup>	\$204,480	\$204,480	\$210,480
<b>Taxable Value School:</b> <sup>3</sup>	\$204,480	\$204,480	\$210,480

### Land Information

<b>Acres:</b>	3.22
<b>Site Code:</b>	114
<b>Land Value:</b>	\$210,480

1: Market value is established for ad valorem purposes in accordance with s.193.011(1) and (8), Florida Statutes. This value does not represent anticipated selling price for the property.

2: Exemptions are applicable for the year shown and may or may not be applicable if an owner change has occurred.

3: The Additional Homestead exemption does not apply when calculating taxable value for school districts pursuant to Amendment 1.

### Sale Information

Official Records Book/Page	Sale Date	Sale Amount	Deed Type	Sale Screening Code	Sale Screening Source	Physical Change Code	Vacant/Improved
7137/2345	5/29/2014	\$147,500	WD	30			V
7137/2342	4/12/2014	\$100	PR	11			V
6486/1809	11/11/2011	\$100	QC	11			V
5951/1036	5/5/2009	\$348,500	QC	11			V
5392/1294	11/30/2004	\$575,000	WD		03		I
4304/0890	3/6/2001	\$100,000	WD	05	01		I
3398/0342	6/1/1994	\$60,000	99		03		I
2903/1646	5/1/1988	\$100	WD				V
2824/0192	7/1/1987	\$100	WD				V
2720/1089	8/1/1986	\$0	NN				V

Sale screening and sale screening source codes are for assessment purposes only and have no bearing on potential marketability of the property.



- Accommodate only office buildings and institutional land uses and shall expressly exclude residential uses (except those Community Facilities defined as Nursing Homes and Related Health Care Facilities in 1-2.6.B.10(B)), 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.
- J. *INS "Institutional Services."* The INS district is established to implement comprehensive plan policies for managing institutional development. The district is intended to accommodate public and semi-public facilities such as government administration buildings; fire, police, and rescue services; health care delivery services; and educational institutions. Land uses such as places of worship, cultural or civic centers, and other similar public or private not-for-profit uses may be included within this district.
- K. *CL "Commercial Limited."* The CL district is established to implement comprehensive plan policies for managing limited commercial development accessible to major thoroughfares near residential neighborhoods. Such development is intended to provide essential household services in locations highly accessible to residential areas. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods. Such shops generally cater to the following markets:
- Neighborhood residential markets within the immediate vicinity as opposed to city-wide or regional market; or
  - A specialized market with customized market demands.
  - A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for limited commercial development are not intended to accommodate large-scale retail sales, services, and trade activities, generally serving a city-wide or regional market. Such stores would usually differ from limited commercial shops since the former would usually require a larger floor area, carry a relatively larger inventory and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposable containers and/or providing drive-in facilities. No residential uses shall be located in the limited commercial district.

-  L. *CG "Commercial General."* The CG district is established to implement comprehensive plan policies for managing general commercial development. The general commercial

district is designed to accommodate general retail sales and services. Sites designated for CG zoning shall be located in highly accessible areas adjacent to major thoroughfares which possess necessary location, site, and market requirements required by general commercial land use activities.

The general commercial district shall also accommodate commercial trades in strategically designated areas as defined in the conditional use criteria. Development standards within the land development code shall require that site plans incorporate amenities necessary to prevent potential adverse effects on the traffic circulation system, public services, and residential development within the vicinity.

The general commercial district is not intended to accommodate manufacturing, processing, or assembly of goods, sales and services of heavy commercial vehicles and equipment, or related services or maintenance activities; warehousing; uses requiring extensive outside storage; or other activities or trades which may generate nuisance impacts, including glare, smoke, or other air pollutants, noise, vibration or major fire hazards. Finally, no permanent residential housing shall be located within the general commercial district.

The location and distribution of general commercial activities shall be determined based on the following considerations:

- Trip generation characteristics, impact on existing and plan transportation facilities and ability to achieve a functional internal circulation and landscaped off-street parking system;
- Location and site requirements based on specific needs of respective commercial activities, their market area, anticipated employment generation, and floor area requirements;
- Compatibility with and impact on other surrounding commercial activities;
- Relationship to surrounding land uses and natural systems; and
- Impact on existing and planned community services and utilities.
- A Malabar Vernacular Style is required for all development along arterial roadways.

M. *IND "Industrial."* The industrial district is established to implement comprehensive plan policies for managing industrial development. In locating industrial districts, consideration shall be directed to selecting sites accessible to rail facilities, terminal facilities, major arterials, labor markets, and necessary urban services. Industrial districts shall not include residential activities. However, residence for night watchman or custodians whose presence on industrial sites is necessary for security purposes may be approved as an accessory use. Industrial districts shall be accessible to major thoroughfares and shall be buffered from residential neighborhoods.

Any additional industrial zoning shall be consistent with the comprehensive plan, including criteria for siting industrial activities, including but not limited to, policy 1-1.3.1, policy 1-1.3.2, and policy 1-1.3.3.

DISTRICT PROVISIONS

§ 1-3.2

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
<b>RESIDENTIAL USES</b>														
Duplex					P	P					P			
Mobile Homes							P							
Multiple Family Dwelling					P	P					P			
Single Family Dwellings	P	P	P	P	P	P					P			
<b>COMMUNITY FACILITIES</b>														
Administrative Services (Public and Not-for-Profit)								P	P	P	P		P	
Child Care Facilities								C			C			C
Churches, Synagogues and Other Places of Worship	C	C	C	C	C	C		P, A <sup>1</sup>	P	P	P		P	
Clubs and Lodges (Not-for-Profit)									P	P				
Cultural or Civic Activities								P	P	P	P			P
Educational Institutions								C, A <sup>1</sup>						C
Golf Course Facilities	C													
Hospital and other Licensed Fa- cilities									C					C
Nursing Homes and Related Health Care Facilities					C	C		C						C
Protective Services					C	C		C	C	C	C			C
Public Parks and Recreation	C	C	C	C	C	C		C	C	C	C			C
Public and Private Utilities	C	C	C	C	C	C		C	C	C	C			C
<b>COMMUNITY RESIDENTIAL HOME</b>														
Level 1 (1 to 6 residents/beds)	C <sup>3</sup>				C	C								
Level 2 (7 to 14 residents/beds)					C	C								C
<b>ASSISTED CARE COMMUNITIES</b>														
I Assisted Living Facility														
Level 1 (1 to 5 residents/beds)		C	C	C	C <sup>4</sup>	C <sup>4</sup>					C			
Level 2 (6 to 15 residents/beds)					C <sup>4</sup>	C <sup>4</sup>								
Level 3 (16 or more residents/ beds)					C <sup>4</sup>	C <sup>4</sup>								
II Adult Family-Care Homes (1 to 5 residents/beds)	C <sup>3</sup>	C	C	C	C	C		C						C
III Adult Day Care Centers					C	C		C			C			C
<b>AGRICULTURAL ACTIVITIES</b>														

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Noncommercial Agricultural Operations	P													
Wholesale Agricultural Activities	P													
Commercial Stables	C													
COMMERCIAL ACTIVITIES														
Adult Activities														
Bars and Lounges										C				
Bed and Breakfast										C				
Business and Professional Offices											P <sup>1</sup>			
Enclosed Commercial Amusement								P	P	P	P	P	P	
Arcade Amusement Center/ Electronic Gaming Establishment										P				
Funeral Homes									P					
General Retail Sales and Services										P	C			
Hotels and Motels										P				
Limited Commercial Activities										P				
Marine Commercial Activities										P	P			
Medical Services										C*				
Mini Warehouse/Storage								P	P	P	P			
Parking Lots and Facilities									C	P		P		
Retail Plant Nurseries								P	P	P	P		P	
Restaurants (Except Drive-Ins and fast food service)									P	P	P			
Restaurants (Drive-ins)									P	P	P			
Service Station, Including Gasoline Sales										P				
Trades and Skilled Services										C*		C*		
Veterinary Medical Services										C*		P		
Vehicular Sales and Services								P	P	P	C	P		
Vehicular Services and Maintenance										C*		P		
Wholesale Trades and Services										C*		P		
INDUSTRIAL ACTIVITIES														
Kennels														C
Manufacturing Activities														P

TABLE 1-3.2. LAND USE BY DISTRICTS

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
Manufacturing Service Establishments														
Vehicle and Other Mechanical Repair and Services												P		
Warehouse, Storage and Distribution Activities										C*		P		
WATER DEVELOPMENT NONCOMMERCIAL ACTIVITIES														
Noncommercial piers, boat slips, and docks														C

C = Conditional Use  
 P = Permitted Uses  
 A = Accessory Use

\* = These uses are permitted only on sites abutting Babcock Street, US 1, and West Railroad Avenue.

1 = Allowed up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.

1 Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.

2 Any Arcade Amusement Center and Electronic Gaming Establishment as defined herein shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.

3 Allowed in RR-65, (1 to 2 residents/beds) as defined in FS Title XXX Chapters 419 & 429

4 ALF Factor of "3" (see section 1-2.6.B.13.B, Part I) only applies to RM-4 & RM-6 for ALF's

(Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05-01, § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07; Ord. No. 12-48, § 2, 1-23-12; Ord. No. 14-01, § 3, 2-3-14)

**Section 1-3.3. Size and dimension criteria.**

A. *Minimum Lot or Site Requirements for All Uses.* Table 1-3.3(A) incorporates required size and dimension regulations which shall be applicable within each respective zoning district. All developments shall have a total land area sufficient to satisfy all standards stipulated within the land development code, including but not limited to:

- Setback requirements;
- Open space, buffers, and landscaping;
- Surface water management;
- Water and wastewater services;
- Access, internal circulation and off-street parking;
- Wetland protection; and
- Soil erosion and sedimentation control standards.

Conventional single family lots shall be required pursuant to square footage requirements stipulated in Table 1-3.3(A). Similarly, more intense development within multiple family residential districts and other specified nonresidential districts shall maintain sites having minimum acreage requirements stipulated in Table 1-3.3(A).

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

Zoning District	Minimum Lot (L)			Setback (ft.) (S)				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.)	Maximum Height (ft.) (stories)	Minimum Living Area (sq. ft.)	Front	Rear					Side (L)	Side (C)	
<b>Rural Residential Development</b>														
RR-65	65,340	150	250	35/3	1,500	40	30	30	30	30	20	N/A	80	0.65
<b>Traditional Single Family Residential Development</b>														
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	15	35	N/A	65	2.00
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	15	45	N/A	55	2.504
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	10	50	N/A	50	4.00
<b>Multiple Family Residential Development</b>														
RM-4	5 Acres Minimum Site	200	200	35/3		60	40	40	40	40	50	N/A	50	4.00
RM-6	5 acres Minimum Site	200	200	35/3		25	20	10	10	10	50	n/a	50	6
						60	40	40	40	40	50	n/a	50	6
<b>Mixed Use Development</b>														
MUC	20,000	100	150	35/3		25	20	10	10	10	50	n/a	50	4
						50	25	10 <sup>4</sup>	20	20	65	n/a	35	6
												0.20		
<b>Mobile Home Residential Development</b>														
R-MH	Site: 5 Acres Lot: 7000					10	8	8	10	10	50	N/A	50	6.00
<b>Office Development</b>														

Zoning District	Minimum Lot (1)			Maximum Height (ft./ stories)	Minimum Living Area (sq. ft.) Minimum Floor Area: 1000	Setback (ft./2)			Maximum Impervious Surface Rte. (sq. ft.)	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 (f)				
CG	20,000	100	150	35/3		35/60	25	20	25	20	35	N/A
Commercial Development												
CL	20,000	100	150	35/3	Minimum Floor Area: 900 Min. Area: 900 Max. Area: 4,000	60	25	10 <sup>4</sup> 15 <sup>3</sup>	20	65	35	N/A
CG	20,000	100	150	35/3	Minimum Floor Area: 1200 Minimum Hotel/Motel Area: 300 Each Unit	50	25	20 <sup>4</sup> 15 <sup>3</sup>	30	65	35	N/A
Industrial Development												
IND	20,000	100	150	35/3	Minimum Floor Area: 1200	50 100 <sup>5</sup>	25 100 <sup>6</sup>	20 100 <sup>6</sup>	30 100 <sup>6</sup>	70	30	N/A
Institutional Development												
INS	20,000	100	150	35/3	Minimum Floor Area: 1200	50	25	20	30	60	40	N/A
Coastal Preservation												
CP	No Size or Dimension Standards Adopted											

<sup>1</sup>Minimum size sites and lots include one-half of adjacent public right-of-way.  
<sup>2</sup>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.  
<sup>3</sup>Setback where rear lot line abuts an alley.  
<sup>4</sup>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.  
<sup>5</sup>Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.  
<sup>6</sup>Recreation activities maximum FAR shall be .10.

B. *Area requirements for uses not served by central water and wastewater services.* All proposed development within areas not served by central water and wastewater services shall comply with the septic permitting requirements of Brevard County.

C. *Impervious Surface Requirements (ISR) for All Uses.* The term "impervious surface" is defined as that portion of the land which is covered by buildings, pavement, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface.

1. *Calculation of ISR.* The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. Water bodies are impervious but shall not be included as such in the ISR calculation.

Cluster development or other site design alternatives may result in individual lots exceeding the ISR, while other lots may be devoted entirely to open space. The Town may require, as a condition of approval, deed restrictions or covenants which guarantee the maintenance of such open space in perpetuity. The ISR requirement shall not be bypassed or reduced. However, the intent is to allow maximum flexibility through calculating ISR on the gross site, and not on a lot-by-lot basis.

2. *Use of Porous Material.* Porous concrete, asphalt, porous turf block, or similar materials may be used subject to approval of the Town Engineer.
3. *Compliance with ISR Stipulated in Table 1-3.3(A).* All proposed development shall comply with the standards given in the table of impervious surface ratios in Table 1-3.3(A).

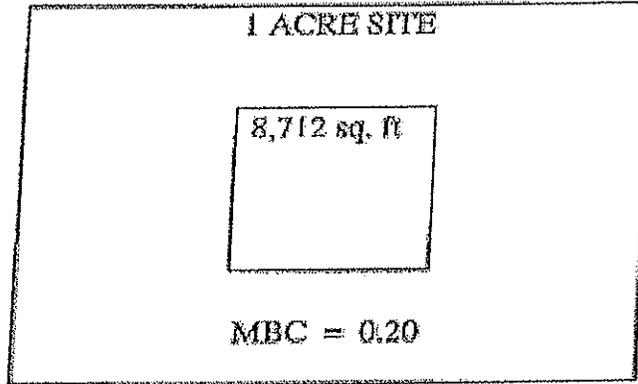
Where a proposed development is donating or dedicating land based on a plan approved by the Town, the gross site before dedication or donation shall be used to calculate ISR. This does not relieve the applicant from providing all required on-site buffers, landscaping, stormwater management areas, setbacks, and other required project amenities.

D. *Maximum Building Coverage.* The term "maximum building coverage" is defined as a measurement of the intensity of development on a site. For purposes of this Code, maximum building coverage (MBC) is used to regulate nonresidential development.

1. *Calculation of MBC.* The MBC is the relationship between the total building coverage on a site and the gross site area. The MBC is calculated by adding together the total building coverage of a site and dividing this total by the gross site area. See figure 1-3.3(D) for a graphic illustration of this concept.

All proposed nonresidential development shall comply with the MBC requirements stipulated in Table 1-3.3(A) for the zoning district in which the development is located.

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

Minor Collector Streets (80 feet R/W)

75

Atz Blvd.

Hall Road

Old Mission Road

Benjamin (Reese) Road

*F. Minimum Distance Between Principal Buildings.* The minimum distance between principal buildings shall be twenty (20) feet. The distance shall be measured at the narrowest space between buildings and shall not include roof overhang.

(Ord. No. 92-8, § 1(B), (D), (J), 8-18-92; Ord. No. 94-4, § 4, 4-3-95; Ord. No. 96-1, § 1, 3-4-96; Ord. No. 97-5, § 1, 3-17-97; Ord. No. 02-03, § 1, 8-5-02; Ord. No. 03-02, § 1, 2-24-03; Ord. No. 04-08, §§ 1, 2, 7-12-04; Ord. No. 06-05, § 1, 2-6-06; Ord. No. 06-16, §§ 1, 2, 10-2-06)

# Article VII- Site Plan Review

## Section 1-7.1. - Applicability and filing procedure.

Site plan approval, as provided for herein shall be required for each of the following:

1. All permitted uses, except single family homes or single family home accessory structures. However, all uses and structures shall comply with surfacewater management criteria of Article VIII.
  2. All conditional uses.
  3. Any use or change in use resulting in one thousand (1,000) square feet of impervious surface area on the entire site.
  4. The provisions of Article VIII: Surface Water Management shall apply to all site plans as if the same were incorporated in this Article.
  5. Any development including single family residences which will involve any clearing, grading or other form of disturbing the land by the movement of earth provided that any one of the following descriptions applies to said movement.
    - (a) Excavation, fill or any combination thereof which will exceed five hundred (500) cubic yards.
    - (b) Fill which will exceed three (3) feet in vertical depth at its deepest point as measured from the natural ground surface.
    - (c) Excavation which will exceed four (4) feet in vertical depth at its deepest point as measured from the natural ground surface.
    - (d) Excavation, fill or any combination thereof which will exceed an area of one thousand (1,000) square feet.
    - (e) Plant and/or tree cover is to be removed from an area exceeding one thousand (1,000) square feet on any parcel of land.
    - (f) Whenever any amount of excavation or fill is proposed within one hundred (100) feet of a stream, stream channel or body of water a soil erosion and sedimentation control plan shall be provided.
- A. *General Site Plan Review Procedure.* In all cases requiring site plan review, no structure or parking area, or part thereof, shall be erected or used, or land or water used, or any change of use consummated, nor shall any building permit be issued therefor, unless a site plan for such structure or use shall have been reviewed by the Town Planning and Zoning Board.
1. *Filing.* Before such site plan shall be approved, an application for such approval shall be filed with the Town Clerk then directed to the Building Official and/or the Town Engineer or other designated officials for their recommendation. Town Engineer is defined as that Town employee, or outside Florida registered engineer contracted by the Town, responsible for performing the duties specified herein as the Town Engineer.
  2. *Application, Fee and Disclosure of Ownership.* Such application shall be in a form substantially in accordance with the form prescribed by the Town Clerk, copies of which may be obtained from the Town Clerk's office. A written power of attorney authorizing a person other than the owner(s) to sign such application must be attached to said application.

All applications shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for site plan approval is sought, except publicly held corporations, in which case the name and address of the corporation and principal executive officers will be sufficient.

The fee schedule for site plan review shall be as determined by resolution of the Town Council.

3. *Review by Town Staff and Planning and Zoning Board.* The application shall be forwarded to the Building Official or Town Engineer and such other staff as may be pertinent. The Town shall proceed to make appropriate studies and/or reviews required to make an appropriate evaluation. The application with evaluative comment shall then be forwarded to the Town Planning and Zoning Board for their consideration and action. The site plan review process shall be carried out in accordance with procedures established by the Planning and Zoning Board, so as to prevent inconvenience and delay to the project.

After reviewing a site plan and staff recommendations, the Planning and Zoning Board shall recommend approval or disapproval. The Planning and Zoning Board shall provide written comments documenting any conditions of approval. If site plan is recommended for disapproval, the Planning and Zoning Board shall specify in writing the reasons for recommending denial. All recommendations of the Planning Board together with the written record shall be forwarded to the Town Council for final action.

4. *Action by the Town Council.* The Town Council shall consider the recommendations of staff and the Planning and Zoning Board and approve with or without conditions, or disapprove the site plan. The Town Council may attach to its approval of a site plan any reasonable conditions, limitations or requirements which are found necessary, in its judgement, to effectuate the purpose of this Section and carry out the spirit and purpose of the Zoning Ordinance.

Any condition shall be made a written record and affixed to the site plan as approved. If the Town Council disapproves a site plan, the reasons shall be stated in writing and the appeal shall be to the Court of appropriate jurisdiction.

#### B. *Review of Minor Site Plans.*

1. *Applicability.* For the purposes of this section, minor site plans shall include the following:
  - a. Residential projects comprised of a single building, having less than five (5) dwelling units, or:
  - b. Projects containing less than one thousand (1,000) square feet of new impervious surface area.
  - c. Single family homes and accessory buildings or ponds which require site plan approval pursuant to section 1-7.1.5.
2. *Submission Requirements for Minor Site Plans.* Minor site plans shall only include that information required in Sections 1-7.2, 1-7.3, which is determined to be applicable to the proposed minor site plan by the Building Official and Town Engineer.
- 3.

*Minor Site Plan Review Procedures.* All minor site plan applications shall be reviewed by the Town Engineer and Building Official and approved by the Building Official, the Planning and Zoning Board and the Chairperson of the Town Council. However, single family homes, accessory buildings or ponds may be approved by the Building Official. Appeals of such decisions shall be conducted pursuant to section 1-7.4

- C. *Minor Modifications of Site Plans.* Minor modifications to approved site plans shall include changes such as the:
1. Addition of awnings, canopies or other ornamental structures; redesign and different location of pools, parking spaces, drives and driveways; or modifications in stairs or elevations of decks, porches, terraces and fencing;
  2. Addition of parking spaces not to exceed twenty-five (25) percent, including fractions thereof, of the total number of existing parking spaces or five (5) spaces, whichever is the greater amount;
  3. Attached or detached additions to buildings which do not increase the floor area in excess of five hundred (500) square feet;
  4. Installation of utility system improvements including buildings not exceeding two hundred (200) square feet.
  5. Aside from minor modifications to site plans as herein defined, any change in use of buildings, structures, land or water, or institutions of new uses, or alteration or major improvements to existing structures, or erection of new buildings or structures shall require a new site plan submittal in accordance with all procedures and provisions of this Code.

Such changes to approved site plans shall be reviewed by the Building Official and or other designated Town consultants/Staff. If the Building Official and Town Engineer have no objection to the request based on its compliance with the Code, such minor modifications shall be submitted for approval by the Town Council Chairperson after review by the Planning and Zoning Board. The Town Council Chairperson shall report each change so approved to the Town Council for the record at the next scheduled meeting.

- D. *Conformance with Zoning Regulations Required.* Any such building, structure or use shall be erected, altered, installed and maintained in full conformity with the provisions of the zoning ordinance and the approved site plan.

(Ord. No. 91-1, 3-19-91)

#### Section 1-7.2. - Considerations in reviewing site plans.

The Planning and Zoning Board shall not approve a site plan unless a finding is made that such site plan conforms to all applicable provisions of the land development regulations.

- A. *Site Location and Character of Use.* The Comprehensive Plan together with the land development regulations, including size and dimension regulations, general provisions, performance standards, and the list of permitted and conditional uses, off-street parking, landscaping, required open spaces, yards and building setbacks shall collectively be the principal guides in determining the suitability of the location of the proposed use.
- B. *Appearance of Site and Structures.* The appearance of site and structures shall be coordinated for the purpose of creating a pleasing and harmonious overall environment. The choice of building materials, plant materials, lighting and other building and site improvements shall be

commensurate with the objectives of the subject use without generating adverse visual impact on surrounding properties or transportation corridors. Architectural style or design is not restricted. Evaluation of the appearance of a project shall be based on the quality of its overall design and relationship to the impacted area considering the following factors:

1. *Harmonious Overall Design.* The exterior of buildings and structures including mass, facade and materials shall be in harmony with the site and the general character of the impacted area and shall not be gaudy or garish. Awnings or ornamental features shall be designed in a manner harmonious with the building design and shall be of appropriate scale, shape, and pattern in order to reinforce good design principles. Similarly, awnings or ornamental features shall not use incompatible or extraordinary scale, shapes, color schemes, patterns or other extraordinary features for purposes of attracting attention. The appearance of buildings and structures shall be disapproved under Section 1-7.2(B) in extreme cases only and reasonable doubt shall be resolved in favor of the applicant.
  2. *Location and Screening of Mechanical Equipment, Utility Hardware and Waste Storage Areas.* Mechanical equipment or other utility hardware other than antennas and stacks on roofs shall be harmonious with the building or they shall be located and/or screened so as not to be visible from any public ways within the impacted area. Similarly, refuse and waste storage areas shall be screened from adjacent properties and public ways by appropriate fences, walls or hedges. In cases where dumpsters must be located in areas highly visible from any public right-of-way, the Town Planning and Zoning Board shall be authorized to require appropriate vegetative or structural screening to shield an unsightly condition.
  3. *Commercial and Industrial Activities Conducted in Enclosed Buildings.* All businesses, services or manufacturing or processing shall be conducted within completely enclosed buildings. If the Town Council determines that a demonstrated necessity exists for outside storage or display due to the impracticality and unreasonableness of enclosure of such services, storage and display areas, in such case such service, storage and display areas or yards shall be screened by a continuous fence or wall or by landscaping and berm system so as to provide a ninety (90) percent opaque screen with a minimum height of five (5) to eight (8) feet, unless the same is demonstrated by the applicant to the Town Council's satisfaction to be impractical and unreasonable.
  4. *Exterior Lighting.* Exterior lighting shall be provided and shall be so arranged as to shield or deflect the light from adjoining properties and public streets.
- C. *Access, Internal Circulation, Off-Street Parking and Other Traffic Impacts.* The Town Building Official and/or designated staff shall advise on matters related to this subsection 1-7.2(C):
1. *Internal Circulation System Design and Access/Egress Considerations.* Driveways, curb cuts, and areas for the parking and internal circulation of vehicles shall be located, designed and controlled so as to provide for safe and convenient circulation within the site and safe and convenient access from and onto adjoining streets. The Town Staff shall review such design considerations based on standard traffic engineering principals and practices and such specifications as may be adopted by resolution of the Town Council. Requirements of Article IX of this Chapter [Code] shall be applied for off-street parking. Among factors to be considered shall be need for acceleration and deceleration lanes; the number, location and size of curb cuts and access drives from adjacent streets; the location and design of

- driveways and access aisles to parking spaces, the arrangement, delineation and marking for parked areas; and the means of access to buildings for fire-fighting apparatus and other emergency vehicles.
2. *Separation of Vehicular and Pedestrian Areas.* Parking areas and driveways shall be clearly identified and separated from principal pedestrian routes and recreation areas by curbs, pavement markings, planting areas, fences or similar features designed to promote pedestrian safety.
- D. *Traffic Impacts.* A traffic impact analysis shall be required for site plan reviews pursuant to standards, procedures and criteria defined herein. The traffic impact analysis is designed to achieve objectives stipulated in the transportation element of the Comprehensive Plan.
1. *Applicability.* A transportation impact study shall be required if:
    - (a) A proposed development generates more than one thousand (1,000) trips per day. Such development shall maintain a level of service C, daily condition and level of service D for peak hour conditions on collector and arterial street segments as noted below. The trip generation shall be based on the Institute of Transportation Engineers, Trip Generation Manual (1988) unless the applicant can demonstrate that unique development characteristics will result in substantially different rates.
  2. *Impact Study Areas.* The transportation impact study area shall include all arterial and collector streets within one half (½) mile of the site entrance and/or shall include the nearest arterial roads that will be impacted by the development. For developments which generate between five hundred (500) and one thousand (1,000) trips during the peak hour or over one thousand (1,000) trips during the peak hour, the study area shall be one (1) and three (3) miles respectively. Estimates of peak hour trip generation shall be determined by the applicant's Florida Registered Traffic Engineer and shall be approved by the Town Engineer. Peak hour traffic impact shall be assessed, with and without the development, for all collector and arterial road segments and their respective intersections with other collector and arterial roadways within the designated service area. If additional traffic counts are warranted, they shall be the applicant's responsibility.
  3. *Contents.* The transportation impact analysis shall contain the following:
    - (a) A detailed description of the collector and arterial road network, including existing and proposed roadway widths and right-of-way widths; existing and proposed traffic signals and traffic control devices; existing and proposed ingress and egress locations, including existing or proposed acceleration or deceleration lanes or turning lane improvements.
    - (b) A detailed description of the existing and proposed land uses within the impacted study area including stages of construction and anticipated completion dates.
    - (c) A detailed description of the existing traffic conditions, including the Average Annual Daily Traffic (AADT) and the highest average peak hour volume for all collector and arterial roads within the study area. The AADT shall be based on a current twenty-four (24) hour traffic count provided by the applicant. The current twenty-four (24) hour traffic count shall be adjusted to compensate for seasonal variations. This adjustment shall be determined by utilizing Florida Department of Transportation (DOT) or traffic counts calculated quarterly at traffic count stations in the Town of

Malabar. The methodology and assumptions underlying the annual adjustment shall be clearly stated. The average peak hour traffic volume shall be the highest average peak hour volume for any weekday twenty-four (24) hour period.

- (d) A detailed Service Level C condition analysis of all collector and arterial roadways and intersections within the study area based on procedures outlined in the 1965 Highway Capacity Manual (including the Northwestern Monographs) and in the Transportation Research Circular No. 212, "Interim Material on Highway Capacity," Transportation Research Board, January, 1980.
  - (e) A description of all the existing collector and arterial roadways and intersections that are at or below the Service Level C condition (Service Levels C, D, E, or F).
  - (f) A detailed analysis of traffic impact of the development, including trip generations (average 24-hour weekday and highest average weekday hour), internal and external trips, trip absorptions and trip distributions over all collector and arterial roads within the study area. The trip generation shall be based on the latest edition of the Institute of Traffic Engineers Trip Generation Manual, unless a qualified traffic engineer demonstrates that unique qualities of the development will result in different rates. All methodology and assumptions must be clearly stated.
  - (g) A detailed cumulative transportation impact of the existing traffic conditions including traffic from the development, normal increases in traffic and increases from allocation of road capacity to already approved projects. This analysis must identify projected AADT and peak hour volumes for all the collector and arterial roads and must describe all the roadways and intersections that will be at or below the Service Level C daily condition or Service Level D peak hour condition.
4. *Traffic Study and Traffic Data Inventory and File.* The Town Engineer shall keep a file on all traffic studies including the future capacity allocated for each project. In determining the projected demand in subsection 1-7.2(D)(3)(g) above, the impact analysis shall include trips already allocated in previous development approvals. The Town shall provide information when available and where appropriate data already exists in order to prevent duplication of efforts and unnecessary costs.
5. *Improvements to Roadways and/or Traffic Control Devices.* Transportation improvements such as intersection improvements; additional turning, acceleration or deceleration lanes; modified land delineations; new or improved traffic control devices; or other such improvements may be required in order to maintain a level of service C daily condition and/or a level of service D peak hour condition. In such case, the applicant for a development permit may be required to fund and/or install the necessary improvements or provide a legal assurance, such as a performance bond or other surety approved by the Town Attorney, prior to the issuance of a building permit. Where the traffic impact does not generate traffic volume that substantiates the total improvement needs, the Town Council shall determine an equitable participation in the required improvement. The participation by the applicant may, at the discretion of the Town Council, consist of a pro-rata dollar share of improvement costs.
- E. *Open Space and Landscape.* Open space shall be comprised of permeable open surfaces, excluding principal structures and impermeable surfaces. No parking areas shall be included as open area. Active recreation areas may be counted as open area.

1. *Residential Open Space Requirement.* All residential development shall preserve a minimum of fifty (50) percent of the upland area as open space. Uplands shall be defined as those areas which are not permanent water bodies or wetlands as defined in Section 1-7.2(G)(2) at the time of application. A maximum of thirty (30) percent of any totally landlocked water body may be credited as open space. At no time shall water bodies comprise more than twenty (20) percent of the total upland open space requirements.
2. *Non-Residential Open Space Requirement.* Non-residential development shall provide a minimum of twenty (20) percent open space.
3. *Mixed Use Open Space Requirement.* Where residential and non-residential development is permitted pursuant to the Town of Malabar Land Development Regulations, the following pro rata open space requirement shall be enforced.

$$OS = \frac{NRA}{TA} \times .2 TA + \frac{RA}{TA} \times .5 TA$$

OS = Open Space

NRA = Non-Residential Acreage

RA = Residential Acreage

TA = Total Area

4. *Use of Open Space.* Open space and spaces between buildings required by this Chapter [Code] shall be located and improved so as to reasonably serve the purposes for which the requirements are intended. These purposes include provisions of adequate light and air, appropriate separation between buildings and uses, enhancement of privacy, sufficient area for recreation and leisure pursuits (in residential areas) and to facilitate surface water drainage.
  5. *Preserve Natural Landscape.* The natural landscape of the site shall be preserved as much as possible for purposes of enhancing the general appearance of the site as well as to prevent excessive storm water run-off, erosion, siltation and dust.
- F. *Required Screening of Abutting Residential and Non-Residential Uses.* In order to maintain stability of residential areas, non-residential development within or abutting residential districts and multiple family development abutting single family residential districts, shall provide a fence or a wall or a combination of a berm and landscaping so as to provide a continuous ninety (90) percent opaque solid screen not less than eight (8) feet in height to form a continuous screen along such abutting property lines. In addition, one tree shall be provided for each thirty-five (35) lineal feet or fraction thereof of such landscape barrier. Notwithstanding, all developments shall comply with the landscape requirements of Article XIV. Where a conflict exists with the standards of this paragraph, the more restrictive requirement shall prevail. Credit may be given for existing plant material against the requirements of this section. Adjustments may be rendered by the Town Council to the requirements of this paragraph based on demonstrated need by the applicant and recommendations of Town Staff and the Planning and Zoning Board. The site plan applicant and successors in ownership shall maintain the continuous screen in perpetuity.
- G. *Flood Prone Land and Wetland Preservation.* In order to promote and preserve natural hydrological conditions and to preserve water recharge areas, water supply and water quality, and natural habitats, the following regulations shall be applied to wetland areas.

1. *Flood Prone Land.* Construction in flood prone areas shall comply with the Town's flood plain management policies.
2. *Wetland Defined.* Wetland areas shall include hydric soils and wetland species identified by the DER pursuant to § 17-4.022, F.A.C. Site specific investigations shall confirm the existence of wetland systems based on on-site soil and vegetative analysis with assistance of appropriate representatives of the State Department of Environmental Regulation, the St. John's River Water Management District, U.S. Army Corps of Engineers, and the U. S. Soil Conservation Service.
3. *Wetland Development Restrictions and Interpretations.* No development other than approved passive recreation, open space, restricted accessway, bird sanctuary, natural stormwater retention/detention, or natural preserve shall be allowed in a wetland area unless "competent evidence" indicates that:
  - (a) Dominant vegetation is no longer comprised of wetland types normally found in the specified soil; and
  - (b) The water regime has been permanently altered artificially or naturally in a manner to preclude its associated watershed areas from functioning as wetlands. Applicants for site plan review shall have an opportunity to so demonstrate that any wetland designations within the confines of their property no longer function as wetlands as defined above. The County urban forester, the soil conservationist as well as representatives of the State Department of Environmental Regulation, U.S. Army Corps of Engineers and the St. John's River Water Management District may be made a part of the site plan review process to assist in identifying and delineating wetlands. The applicant may request that a waiver of the provisions of this section be granted by the Planning and Zoning Board for small isolated marginal wetlands for which the developer shall provide viable compensatory preserve areas which mitigate against a loss of viable wetland systems. The Planning and Zoning Board shall consider the recommendation of the Town Engineer prior to taking action on such a request and shall grant the same only in the case of an overriding public interest. Finally, this section shall not prevent the construction of one single family home on existing lots of record.

The provisions of Article VIII: Surface Water Management are hereby incorporated into this subsection by reference.

- H. *Available Potable Water.* All future applications for new development shall be required to connect to a central water system except as herein provided.
1. *Exceptions for Limited Scale Development.* When connection to a central water system is not feasible, applicants for limited scale development adaptive to service by an interim water system, may be allowed if approved by the County Director of Public Health subject to the following conditions:
    - a. Assurance in writing from a central water utility that extension of lines to the development is not part of its master plan for expansion; and,
    - b. Agreement by the applicant that the system shall be connected to the central utility system at no cost to the Town when service becomes available. The applicant shall be required to post a performance bond or other surety approved by the Town Council

after considering recommendation of the Town Engineer and the Town Attorney. The performance bond shall be for the express purpose of constructing water system improvements required as a condition of subdivision approval.

2. *Intent of Regulating Procedure.* The intent of this permitting procedure is: (1) to maintain a comprehensive data base concerning water supply and quality; (2) to discourage unregulated proliferation of private water systems; and (3) to achieve a subsystem design which can be effectively and economically integrated into a central public system certified and regulated by an approved local public service entity at a later point in time and to encourage a compact urban development pattern by managing the location, timing and scale of land development to assure that new development can be efficiently served by public facilities without adversely impacting the City's fiscal capacity; and (4) to discourage all new subdivision of land unless served by a central water utility and to similarly discourage nonresidential development on existing lots of record when such sites are not serviced by a central water utility.
3. *Testing of Private Wells.* In addition, the Town may undertake any necessary action to prevent or remedy water supply and water quality problems. To this the Town may request analysis of water quality and supply of all permitted private wells based on evolving problems and issues associated with water resources. The private well owner may be assessed by the Town after due public hearings for needed water quality, supply problems, requisite testing, laboratory analysis, and improvements, deemed necessary and fiscally equitable.
- I. *Wastewater Service.* All applicants for development shall be required to connect to a public wastewater utility regulated by the Public Service Commission, the Department of Environmental Regulation (DER) and/or the County Environmental Health Department. Where a system for wastewater is unavailable, the applicant shall provide an interim wastewater system approved by the DER and/or the County Environmental Health Department and shall agree in writing that the system will be connected to a public wastewater utility at no cost to the Town when service becomes available.
  1. *Intent and Purpose of Regulating Wastewater Disposal Systems.* The intent of this provision is: (1) to discourage unregulated proliferation of private package treatment plants; (2) to achieve a subsystem design which can be effectively and economically integrated into a major central public wastewater system at a future point in time which would be certified and regulated by a local public entity; and (3) to encourage a compact urban development pattern by managing the location, timing, and scale of land development to assure that new development can be efficiently served by public facilities without adversely impacting the City's fiscal capacity.
  2. *Design Standards and Required Guarantee.* The system shall be designed to satisfy performance standards of the Department of Environmental Regulation (DER), other applicable regional, state, or federal standards, or standards which may be hereafter adopted by the Town. The applicant shall be required to post a performance bond or other surety approved by the Town Council after considering recommendations of the Town Engineer and the Town Attorney. The performance bond shall be for the express purpose of constructing waste water system improvements required as a condition of subdivision approval.

3. *Regulating Use of Septic Tanks and Wastewater Disposal Fields.* Notwithstanding any other provisions of this Code, when septic tank and waste disposal field is the only means of individual sewage disposal, the County Environmental Health Department shall enforce State law regulating use of septic tanks and wastewater disposal fields.
- J. *Soil Erosion, Sedimentation Control, and Estuary Water Resource Protection.*
1. *Applicability.* In order to prevent both soil erosion and sedimentation, and to protect both ground and surface water resources, a soil erosion and sedimentation control plan shall be required as a part of an application for site plan review whenever a development will involve any clearing, grading, or other form of disturbing land by the movement of earth, provided that any one of the following descriptions applies to said movement:
    - (a) Excavation, fill, or any combination thereof will exceed five hundred (500) cubic yards.
    - (b) Fill will exceed three (3) feet in vertical depth at its deepest point as measured from the natural ground surface.
    - (c) Excavation will exceed four (4) feet in vertical depth at its deepest point as measured from the natural ground surface.
    - (d) Excavation, fill or any combination thereof will exceed an area of one thousand (1,000) square feet.
    - (e) Plant and/or tree cover is to be removed from an area exceeding one thousand (1,000) square feet on any parcel of land.
    - (f) Whenever excavation or fill is proposed within one hundred feet of a stream, stream channel, or body of water, a soil erosion and sedimentation control plan shall be provided.
  2. *Definitions.* For the purposes of this subsection 1-7.2(j) the following definitions are provided:
    - (a) *Soil erosion* shall mean any removal and/or loss of soil by the action of water, gravity, or wind. Erosion includes both the detachment and transport of soil particles.
    - (b) *Sedimentation* shall mean the settling out of the soil particles which are transported by water or wind. Sedimentation occurs when the velocity of water or wind in which soil particles are suspended is slowed to a sufficient degree and for a sufficient period of time to allow the particles to settle out of suspension or when the degree of slope is lessened to achieve the same result.
    - (c) *Erodible slope* shall mean all slopes with inclines in excess of four (4) percent unless modified by the Town Engineer based on consideration of specific soil conditions.
    - (d) *Large flat surface area (unpaved)* shall mean an area which is flat or whose slope is less than four (4) percent and which consists of more than one thousand (1,000) square feet of exposed soil.
  3. *Erosion Water Quality Control Measures.* All measures necessary to minimize water quality degradation soil erosion and to control sedimentation in the disturbed land area shall be implemented. The following protection shall be provided for all disturbed areas: minimize velocities of water runoff, maximize protection of disturbed areas from stormwater runoff, and retain sedimentation within the development site as early as possible following disturbances. A list of major problem areas for erosion and sedimentation water control degradation control follows. For each one, the purpose(s) of requiring control is

described. Soil erosion and sedimentation control measures for all such areas shall be provided with a view toward achieving the specific purpose listed below for which a control plan is required:

- (a) *Erodible slopes*: Prevent detachment and transportation of soil particles from slope.
- (b) *Streams, streambeds, streambanks, bodies of water, lake shorelines*: Prevent detachment and transportation of soil particles.
- (c) *Drainageways*: Prevent detachment and transportation of soil particles (which would otherwise deposit in streams, bodies of water, or wetlands); promote deposit or sediment loads (traversing these areas) before these reach bodies of water.
- (d) *Land adjacent to streams, ponds, lakes, and wetlands*: Prevent detachment and transportation of soil particles. The applicant shall not adversely impact aquatic vegetation within the sensitive transition zone located between the upland and the mean high water line (ordinary high water line for non-tidal waters). No such vegetation shall be disturbed without approval of the Town. Any such approval shall be based on a demonstrated necessity which promotes the overall public health, safety and welfare. Furthermore, any such disturbance of aquatic vegetation shall be compensated by revegetation based on a plan approved by the Town as stipulated herein. The applicant shall coordinate plans for development along the riverfront or tidal waters with the Florida Department of Environmental Regulation as well as the U.S. Army Corp of Engineers where tidal waters might be impacted. Where deemed appropriate by the Town, the site plan shall include the planting of native indigenous aquatic plant vegetation to promote stability of the shoreline and to enhance water quality.
- (e) *Enclosed drainage structure*: Prevent sedimentation in structure, erosion at outfall of system, and deposit of sediment loads within system or beyond it.
- (f) *Large flat surface areas (unpaved)*: Prevent detachment of soil particles and their off-site transportation.
- (g) *Impervious surfaces*: Prevent the detachment and transportation of soil (in response to an increase in the rate and/or volume of runoff of the site or its concentration caused by impervious surfaces).
- (h) *Borrow and stockpile areas*: Divert runoff from face of slopes which are exposed in the excavation process; convey runoff in stabilized channels to stable disposal points; leave borrow areas and stockpiles in stable condition. Creation of water bodies by excavation and/or impoundment shall comply with applicable provisions of Article VIII.
- (i) *Adjacent properties*: Prevent their erosion and/or being deposited with sediment.

K. *Additional Considerations*. The Planning and Zoning Board or the Town Council may require additional information be provided by the petitioner for site plan review in order to carry out a review process which is necessary to fulfill the purpose, intent and spirit of this Chapter [Code].

(Ord. No. 91-1, 3-19-91)

Section 1-7.3. - Information to be included in site plan.

A site plan, for the purposes of this Section, shall include, but not necessarily be limited to, the

following requirements:

1. Site plan with lot configuration, finished ground floor elevations, contours and designating number of dwelling units, square footage of site, building coverage, square footage of paved areas and open area, and setbacks to scale indicating compliance with regulations.
2. A scaled drawing of the side, front and rear facades of the building or structure, including roof pitch, fenestration including treatment of roof line, windows, and doors as well as a description of materials to be used.
3. Generalized floor plan indicating uses and square footage of each proposed use within each building or structure, building exterior construction material and color, and building height.
4. Location and character of all outside facilities for waste disposal; storage areas; or display.
5. Location and dimensions of all curb cuts, driveways, dedicated cross-easements including their design, location, alignment, dimensions, and specifications; details of off-street parking and loading areas, and vehicular surfaces available for maneuvering, including surface materials, number of employees and number and type of vehicles owned by the establishment. Any combined off-street parking facilities shall be submitted with an agreement specifying the nature of the arrangement, its anticipated duration, and signatures of all concerned property owners.
6. Location of all pedestrian walks, malls, yards and open spaces.
7. Location, size, character, color and copy, height and design of all signs.
8. Location and character of landscaped areas and recreation areas.
9. Location, design and character of all public, semi-public, or private utilities such as water and wastewater disposal facilities, underground or overhead electric lines, gas transmission lines, or other similar facilities or services.
10. Location, height and general character of perimeter or ornamental walls, fences, landscaping, including berms and other required screening devices and any other plans for protecting adjacent property owners.
11. Surface water drainage facilities plan showing existing and proposed grading, drainage patterns and earthwork computations, certified by an engineer or architect registered in the State of Florida.
12. Location of existing easements and rights-of-way.
13. Land survey with complete legal description prepared and certified by a registered surveyor. All architecture or engineering designs must be prepared by a professional architect or engineer registered in the State of Florida pursuant to Florida Statutes 467 and 471 as exists or hereafter amended and which require an appropriate seal on the subject plan prior to issuance of a building permit.
14. Verified statement showing each and every individual person having a legal and/or equitable ownership interest in the subject property except publicly held corporations whose stock is traded on a nationally recognized stock exchange, in which case the name and address of the corporation and principal executive officers will be sufficient.
- 15.

The applicant for site plan review may, at his option, submit a preliminary site plan sketch indicating a general idea of how it is proposed to develop the parcel. Upon tentative approval of a sketch, the applicant can then proceed to have a detailed site plan prepared in accordance with the requirements in this section.

*(Ord. No. 91-1, 3-19-91)*

Sec. 1-5.29. - Design requirements for development within office institutional, commercial limited, commercial general and residential/limited commercial along arterial roadways.

- (a) A Malabar Vernacular architectural style for each structure is required. This shall include the following architectural elevations facing public rights-of-way on arterial roadways:
1. A metal panel, 5-seam or metal shake roof is acceptable. A 5-tab twenty-five (25) year dimensional shingle roof or manufactured equivalent of a wood shake roof is acceptable. 3-tab roof shingles, barrel vaulted tiles, or corrugated roof systems are not permissible.
  2. Pitch of main roof, hipped or gable, shall be no greater than 5:12; mansard roof shall be no greater than 9:12; porch roof shall be a lower pitch than the main roof. A minimum 6" overhang is required for any roof structure. All structures must have a minimum 3:12 slope roof. Multiple roof systems with matching roof slopes are permissible. Low slopes ("Flat") roof systems are permissible when screened by a mansard roof or parapet wall meeting the design requirements.
  3. The predominant exterior color shall be pastel shades, white or light earth tones. Dark earth tones are acceptable in brick or stone.
  4. Manufactured brick or materials that have the appearance of brick are acceptable. Horizontally struck stucco, exterior insulated finish system stucco panels, board and batten, wood or vinyl siding, and stained hardwood panels shall also be considered acceptable finishes.
  5. Front porch. The front porch must encompass an area greater than fifty percent (50%) of the front facade. The porch must be a minimum of 60" in depth.
  6. Gingerbread trim and/or porch railings, columns or posts shall have the appearance of light frame wood construction.
  7. Trim colors shall be white or light pastels. (Trim shall be considered railings, columns, door and window surrounds, soffits, shutters, gutters and downspouts, and other decorative elements.) Trim finishes shall be of a contrasting lighter color than that of the primary building color with the exception of white as a primary building color.
  8. There shall be no area greater than four hundred (400) square feet of contiguous blank wall area on any front facade that remains unadorned by architectural features that include, but are not limited to, windows, doors, lights, banding trim or porch elements.
  9. There shall not be any singular facade that has greater than 100' lineal feet of run without a minimum sixteen-inch break, by using a directional or material change.
  10. Metal-clad structures are permissible. Internal bracing must be certified to accept additional finishes or structures applied to the exterior metal panels. No external "X" bracing is to be visible on any front facade. Finish panels must be able to accept a painted finish. All exterior wall finishes must match the primary building color. The use of corrugated, synthetic or fiberglass panels is prohibited on any front wall or any front roof surface. All design requirements must be met for metal-clad structures as for any other new structure.
- (b) The predominant exterior color shall be applied to all sides of the structure.
- (c) The design requirements listed above shall be applicable to all new construction in these zoning districts, and in the case of additions or renovations to, or redevelopment of, an existing building or project, where such addition, renovation or redevelopment exceeds fifty (50) percent of the square footage of the existing structure(s). A mirror building, defined as a building meant to compliment a pre-existing structure, of adjacent or connected properties, by use of identical material finishes, scale and form, shall be exempt from the design requirements. New buildings that are part of an overall campus plan that has an established architectural theme may be exempt from the design requirements herein with the approval of Town Council.
- (d) The design requirements listed above shall be applicable to all accessory structures not exempted by division (10)(c). Any accessory structure not meeting this requirement shall be screened so as to be not visible from the public right-of-way. Mechanical equipment such as gasoline pumps, air and

vacuum machines, drive-through menu boards and speaker stations, drive-through teller stations, ATMs, and similar appliances which require direct access by the public shall be exempt from the design review requirements of this section.

- (e) Compliance with the requirements set forth in this subsection shall be demonstrated by submittal of building front elevations and color and material samples at the time of site plan review. By way of illustration and not by way of limitation the styles depicted in illustration numbers E(1)-E( ) are deemed "Malabar Vernacular Style".
- (f) Structures in the following use categories are exempt from the design review requirements of this subsection, including: public utility equipment, commercial towers, hospitals and churches.
- (g) The Town-wide Sign Code shall be adhered to with the following exceptions:
  - 1. *Materials*. The color, construction and material of each sign should be compatible with the architecture on the site.
  - 2. *Design*. Every sign frame or support shall be designed as a sympathetic architectural element of the building(s) to which it is principally related.
  - 3. Free standing signs shall have landscaping at the base.
- (h) Structures having a federal or state historic site status shall be exempt from this subsection.
- (i) The Town Council may, by resolution, adopt such administrative policies, manuals and/or fees as necessary to implement the design requirements identified above.

(Ord. No. 07-02, § 5, 4-2-07; Ord. No. 08-13, § 1, 10-20-08)

## Development Agreement

This Agreement made this 5 day of JAN 2015 (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 168, 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  
Debby K. Franklin, CMC  
Town Clerk/Treasurer

By: Carl A. Beatty  
Mayor Carl A. Beatty  
Council Chair



IN THE PRESENCE OF:

William J. Carrane  
Dennis M. Merian

KELLWILL, LLC:

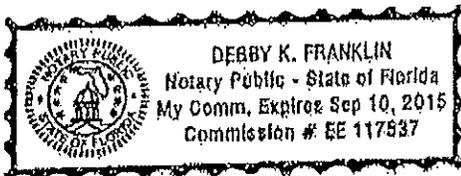
By: William J. Carrane  
William J. Carrane, it's Manager

State of Florida  
County of Brevard

On this 17 day of Dec, 2014 before me appeared William Carrane 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.

Debby K. Franklin  
Notary Public  
My commission expires:

Notary Stamp



# STAFF COMMENTS

1. Karl Bohne, Town Attorney
2. Daryl Munroe, Building Official
3. Keith Mills, Town Planner
4. Morris Smith, Town Engineer
5. Brian Foster, Third Party Fire  
Reviewer

## Denine Sherear

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↙  
**From:** Karl Bohne <KBohne@fla-lawyers.com>  
**Sent:** Tuesday, January 19, 2016 4:51 PM  
**To:** Denine Sherear  
**Cc:** Debby Franklin  
**Subject:** RE: Site Plan Review Information for Kellwill, LLC -Route 1 Motor Sports 1300 HWY 1, Malabar FL

↘  
I finished my review and other than that which is required by the development agreement I see no legal issues. Technical issues will need to be addressed by the planner and engineer

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**From:** Denine Sherear [mailto:dsherear@townofmalabar.org]  
**Sent:** Tuesday, January 19, 2016 3:22 PM  
**To:** Karl Bohne  
**Subject:** Site Plan Review Information for Kellwill, LLC -Route 1 Motor Sports 1300 HWY 1, Malabar FL

This is the site plan packet information that has gone out to staff for review.

Thank you  
Denine

**Denine M. Sherear**  
**Admin Assist. to Building Official**  
**Building Department- Permitting**  
**2725 Malabar Road**  
**Malabar , FL 32950**  
**321-727-7764 x 14**  
**321-727-9997 fax**  
**Hours: 8:30AM- 4:30PM**

Please Note: Florida has a broad public records law. As a result, any written communication created or received by Town of Malabar officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing

**Town of Malabar  
BUILDING DEPARTMENT REVIEW SHEET**

PG 1 OF 2  
(Return to Denine Sherear)

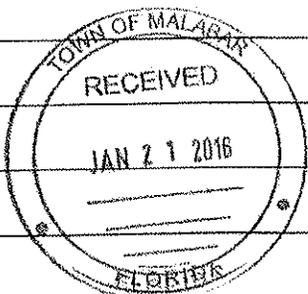
PLEASE RETURN ATTACHED SITE PLAN(S)

<b>PROJECT:</b>	Site Plan Review Route 1 Motor Sports 1300 Highway 1 Malabar, FL	<b>DATE ROUTED:</b>	01/19/2016
<b>BP.:</b>	n/a	<b>DATE TO BE RETURNED*:</b>	02/01/2016
<b>APPLICANT</b>	Willy Carmine KellWill, LLC 321-626-1835 Vaheed Eng 321-729-8382	<b>DEPT.:</b>	<input type="checkbox"/> MORRIS SMITH, TOWN ENGINEER <input type="checkbox"/> KEITH MILLS, TOWN PLANNER <input type="checkbox"/> CHRISTOPHER ROBINSON, FIRE CHIEF <input checked="" type="checkbox"/> DARYL MUNROE, BUILDING OFFICIAL

<b>MARK IF NO COMMENTS:</b>	<b>REVIEWER'S SIGNATURE:</b>
<b>PLEASE RETURN WITHIN 5 BUSINESS DAYS</b>	
<b>TOTAL HOURS WORKED ON REVIEW:</b>	

included:

**COMMENTS:** I HAVE A CONCERN WITH THE OIL STORAGE ROOM IN THIS BUILDING. BECAUSE OF A POTENTIAL HAZARD, THE WALLS AND CEILING WOULD HAVE TO BE FIRE RATED. FOR INSURANCE PURPOSES, IT MAY BE ADVANTAGEOUS TO STORE GREASE AND OIL IN A DETACHED BUILDING.



## Denine Sherear

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**From:** Keith Mills <kmills@cfl.rr.com>  
**Sent:** Friday, February 12, 2016 12:18 AM  
**To:** Denine Sherear  
**Subject:** Re: Comments' from the Town Engineer- Morris Smith

Denine,

I have the following comments:

1. Show location and details of dumpster.
2. Show location and details of site lighting.



On Tue, Feb 9, 2016 at 6:06 PM, Denine Sherear <[dsherear@townofmalabar.org](mailto:dsherear@townofmalabar.org)> wrote:

Keith,  
Please see attached comments from Morris Smith Town Engineer.

Thank you  
Denine

Denine M. Sherear  
Admin Assist. to Building Official  
Building Department- Permitting  
2725 Malabar Road  
Malabar , FL 32950  
[321-727-7764](tel:321-727-7764) x 14  
[321-727-9997](tel:321-727-9997) fax  
Hours: 8:30AM- 4:30PM

Please Note: Florida has a broad public records law. As a result, any written communication created or received by Town of Malabar officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing

**TOWN OF MALABAR  
MEMORANDUM**

Date: February 9, 2016 Memo: 16-CE-01  
To: Denine Sherear, Admin Assist. to Building Official Project No.:  
From: Morris Smith, Town Engineer Variance No.:  
Ref: Route 1 Motor Sports/Kellwill LLC – Site Plan Comments

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I have completed my review of the site plan provided for the Route 1 Motor Sports facility and my comments are as follows:

1. The Site Drainage and Stormwater Calculations are approved as submitted.
2. The Stormwater structures DS-01 and Ds-03 have their definitions transposed.
3. The Dumpster Pad location was not shown on the site plan.
4. The Site Lighting Plan was not provided.

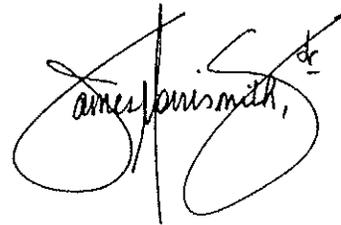
I made a phone call to Mr. Vaheed Teimouri, PE, the Engineer of Record for this project. I spoke to him about my review and we discussed the items above.

I pointed out to Mr. Teimouri that the site lighting plan was not required if the light fixtures are on poles less than six (6) feet tall and that the lights were less than 100 watts. We also discussed the required maximum 0.2 LUX measurement at the property lines

We discussed the use of short bollard type, low-voltage, LED lights as an appropriate fixture for the roadway lighting and for the edge of parking lot lighting.

Very Truly Yours,

DN: c=US, o=IdenTrust ACES  
Business Representative,  
ou=JAMES MORRIS SMITH JR PE  
PSM LLC, cn=James M Smith Jr,  
0.9.2342.19200300.100.1.1=A0109  
7C00000144C2E806330000A6CA  
'Date: 2016.02.09 17:49:38 -05'00



James Morris Smith, Jr., P.E.  
Town Engineer



# FPE FORENSICS, PLLC

FIRE PROTECTION DESIGN, CONSULTING & THIRD PARTY PLANS REVIEWS



11 Freedom Dr., Murphy, NC 28906 &  
4017 Murfield Dr. E., Bradenton, FL 34202  
Phone: (828) 837-2551 (w) (941)928-8138 (c)  
E-Mail: brfoster@fpeforensics.com

February 15, 2016

Mrs. Denine Sherear,  
Administrative Assistant to Building Official  
Town of Malabar  
2725 Malabar Rd.  
Malabar, FL 32950-4427

RE: Route 1 Motor Sports AKA: KellWill, LLC, 1300 Hwy. 1 Malabar  
Site Plan Comments  
Plans Prepared by: Temouri & Associates, Inc.  
Plan Dated 09-14-2015

Dear Mrs. Sherear,

We have reviewed this site plan in conjunction with the proposed preliminary architectural plans. The site is a long narrow site with a proposed single 24 foot entry off of US 1. The access roadway to the site continues as a 24 foot wide improved roadway that will pass within 16 feet of the proposed building. This access extends into the property and is provided with a 48.4 ft. radius loop around parking and passing within about 20 feet of Building 2, a roof only structure. There three 8 inch fire wells will be provided for drafting by the fire department. Use of the two wells interior to the site would not be feasible for use by the fire department as they could have potential fire exposures that would risk fire personnel and equipment.

From the architectural drawings and a phone conversation with the architect, there are no current plans to add fire sprinklers in the two buildings that would reduce the exposures to responding emergency vehicles.

Based on the current site plan submittal, we have the following comments:

1. The existing 24 foot entrance to the site needs to be widened to 30 feet to reduce the risk of obstruction to fire department and emergency vehicles.
2. The roof overbuilds on the south side of Building 1 should be eliminated, except as necessary for a narrow shed roof to reduce rain from entering an open door. This will effectively increase the distance between responding emergency equipment and the structure plus allow for a 30 ft. wide access drive up to the 2<sup>nd</sup> drafting hydrant. The only two alternatives that could be offered would be to provide fire sprinklers for Building No. 1, so that access to the site by responding emergency vehicles would not be of such a critical concern. If a second entrance to the property was possible from East Railroad Avenue that would also be a satisfactory alternative to eliminate changes to the building.
3. No parking signs and stripping shall be provided along the roadway between Building 1 and the property line.



Mrs. Denine Sherear  
February 15, 2016  
Page 2 of 2

4. The 48.4 foot turn radius needs to be made symmetrical so that fire vehicles can easily traverse either clockwise or counterclockwise as conditions dictate.

Subject to the above comments, the site plan needs to be revised to improve emergency vehicle access.

Sincerely,

Brian R. Foster, a State of Florida Professional Engineer, License 43938. This document has been electronically signed and sealed by Brian R. Foster on February 7, 2016 using a Digital Signature. Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies.

Digitally signed by Brian R. Foster, P.E.  
DN: cn=Brian R. Foster, P.E., o=FPE FORENSICS, PLLC,  
ou=Florida P.E. 43938, email=brfoster@peforensics.com,  
c=US  
Date: 2016.02.15 19:08:40 -05'00'

Brian R. Foster, FPE,  
President  
Certified Fire Safety Inspector

cc FPE Forensics File: 1198-16

## Denine Sherear

---

**From:** Vaheed Teimouri <vbteimouri@gmail.com>  
**Sent:** Tuesday, February 16, 2016 7:45 PM  
**To:** Denine Sherear  
**Cc:** Willy Carmine; Morris Smith  
**Subject:** Re: FW: Route 1 Motor Sports Site Plan

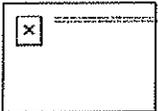


Hi Denine:

Here are the revised plans, all the minor comments such as dumpster & site lighting locations have been addressed.

Please let me know how many sets do you need and I will bring them tomorrow.

Thank you,



Vaheed B. Teimouri, P.E.

TEIMOURI & Associates, Inc.

32 East New Haven Avenue

Melbourne, Florida 32901

321-729-8382 Tel

321-729-8969 Fax

321-508-5422 Cell

On Tue, Feb 16, 2016 at 9:14 AM, Denine Sherear <[dsherear@townofmalabar.org](mailto:dsherear@townofmalabar.org)> wrote:  
Please see attached comments from the Third Party Plan review.

Thank you  
Denine

Denine M. Sherear  
Admin Assist. to Building Official  
Building Department- Permitting  
2725 Malabar Road  
Malabar, FL 32950  
[321-727-7764](tel:321-727-7764) x 14  
[321-727-9997](tel:321-727-9997) fax  
Hours: 8:30AM- 4:30PM