

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING  
JANUARY 25, 2012 7:30 PM**

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

**A. CALL TO ORDER, PRAYER AND PLEDGE:**

Meeting called to order at 7:30 P.M. Prayer and Pledge led Chair Bob Wilbur.

**B. ROLL CALL:**

CHAIR:	BOB WILBUR
VICE-CHAIR:	PATRICK REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL, excused
BOARD SECRETARY:	DENINE SHEREAR
TOWN CLERK/TREASURER	DEBBY FRANKLIN

Franklin stated Zindel called and will continue to be out of State till mid February. She will keep us posted.

**C. ADDITIONS/DELETIONS/CHANGES:**

**D. CONSENT AGENDA:**

1. **Approval of Minutes** Planning and Zoning Meeting – none

**E. PUBLIC HEARING:**

**F. PUBLIC:**

**G. ACTION:**

**H. DISCUSSION:**

Krieger wanted item 2 and 4 moved to item 1 and 2 because people are in audience.

**This was moved to Discussion Item #1**

**2. Tractor Trailer Parking in Residential Zonings**

**Exhibit:** Agenda Report No. 2

**Recommendation:** Discussion

Discussion:

Krieger said this was conflict between two paragraphs. The second para of this 1-5.16 should just be dropped. (deleted) He looked at nuisance ordinance and thinks that pg 693 can be used to handle this. He has under the control of the legal property owner. Where it reads shall it should be *may*. He thinks that is incredibly restrictive.

Without defining trucks the two things he would change:

- in first paragraph put *under control* instead of license plate.
- if you leave the second paragraph in then add *under control* instead of legal owner.

Wilbur said truck is vehicle of 5000 pounds or less. A 1-ton truck is over 9000 pounds. It was recommended to him that anything that requires a CDL then is considered a heavy truck.

Ritter said use the definition in the FS 320. Wilbur said these definitions still limit personal vehicles. Ritter said if it is not for commercial use or farm use. If for commercial use then they should have business license. Abare liked Wilbur's idea.

Krieger likes to keep it simple. Use state definition so we don't have to change code when state changes definitions. Who does this affect? He doesn't like the whole chapter. If you get a big RV do you have to have one of those licenses? Ritter said no – it is private.

Chuck McClelland said years ago they had chauffeurs license and then State got rid of it. Then got Class D and CDLs. Then soccer moms were getting tickets. You can drive any vehicle up to 26,000 pounds and any RV.

In the truck tractor they go by gross weight not net weight. This is throwing this into the large dump truck. Liz said how many have a dump truck without a business license. Dump trucks are the same size as tractor trailers. He had class C up to 26000 pounds. Anyone can drive his tow truck.

Krieger said they came up with control aspect instead of owner for vehicle. Ritter read it again from Florida Statute 320. Should vehicles be defined per FS 320?

Make it all one paragraph or dump it completely. Ritter said add it to bottom of 1-5.16. Change the heading and change title. It is also for construction and storage.

Krieger said the difference is commercial and non-commercial. Can you have a semi-tractor that is not business related? Reilly said it should be separate – Section 1-5.15 and 1-5.16. Reilly said this item is just about 1-5.16.

Krieger said the question they were asked, if you are leasing a vehicle you are in violation of this section of the code.

Ritter said trucks as stated in FS 320. Krieger said are we trying to fix the paragraph. Reilly said yes. Abare said what about the requirement to CDL license. What state requires for CDL then you need to get CUP. Wilbur said that will police itself. Chuck said you can drive dump and tractor without a CDL. Abare drove a truck years before and he had to have a chauffeur license.

Ryan asked about neighbors that move. Initially no problem and then moved and new neighbors don't like it. Code Enforcement would trip it if there is a complaint.

Reilly said we need to wordsmith the two paragraphs and then do we want to add the CUP in another paragraph.

Krieger still thinks this is a major step that is not necessary because it is dealing with such a small part of this town. Why are we talking about it? The Town will be controlled by the gated communities. In his mind, someone can drive in with a huge boat and different people are offended by different people. He said he would be in violation if he leases a car. Let's not build up a whole bureaucracy that will control all uses. He may want to buy an airplane and park it in his front yard. If it is recreational it should be allowed. Krieger said the other should be controlled by home occupational license if it is part of their livelihood.

Abare said Krieger is being redundant as they all know how he feels; he doesn't like this ordinance.

Ritter said it is the size and if one is tagging on the other. Don't make everybody go in for a CUP but also so they don't get in trouble by the town.

Ryan said the example of person with a medium size box van that uses it for work. He gets his call by phone, needs a BTR (Business Tax Receipt – was occupational license), which should be a requirement. Ritter said if they are using vehicle as part of a business then BTR takes care of it. If it is used for personal then it should be no problem.

Ryan talked about Arlo Gurthie who has a large motor coach. Is that commercial? Ritter said no it is for his personal use. It is his home away from home.

Reilly asked what they wanted in 3<sup>rd</sup> paragraph. The Florida Statute reference for definitions can be added to first paragraph.

The CUP in the 3<sup>rd</sup> para use – private vs. commercial- we don't care about those who drive as part of their business.

Wilbur read commercial vehicle – 26,001 pounds GVW or has 3 or more axles regardless of weight. If its use is not for profit it is not commercial.

Krieger said if you have a Peterbuilt cab and a trailer and you keep a trailer for your race cars and you drive your big fancy truck on Rocky Point Rd. It is not commercial. Ritter said she sees them and they are private use.

Krieger said he is not against this. He doesn't see a truck tractor parking on Blanche or Florence but for those that have 30 or 50 acres you are just making more criminals by not allowing it.

Wilbur relayed story of a friend that has a truck tractor. Has equipment trailer that he stores at industrial storage yard. He drives his truck tractor home. His single axle freightliner and he lives in a residential area in Melbourne and has no problem with neighbors. When he parks his truck tractor it is not visible.

Krieger said to add the visibility requirement to the paragraph and just add trucks larger than 26,001 pounds must be screened. The requirement is already in code.

Abare asked what initiated this. Wording? Yes. Abare polled board members on if they had issue. No clear consensus. Ritter said if it is not causing a safety problem and not on public street; just allow the truck tractors to park. She says she does not have problem in RR-65 with truck tractors and trailers. In smaller residential areas, then only the truck tractors.

Wilbur relayed the large trailers that deliver hay in large trailers. They could stay on property for a long while. They are like large roll offs. Ritter asked if they would be considered agricultural.

Krieger is ready to read new paragraph he proposes. Abare is still trying to see if there is a problem and asked again if Ritter had a problem with truck tractor and trailer parking. Ritter said no problem because they are raising cattle. Abare said Bldg. Ofc. said he could get a pole barn on 5 acres.

Reilly said a toy hauler, stockade trailer, enclosed trailer, and 18 wheeler could be an F350 that pulls these. Wilbur said you have to have 3 axles to be defined a heavy truck. Ryan said you can't maneuver on our streets. Abare said it would mess up the driveway. Ryan said it would mess up the road. Ritter said they should have to fix it if they mess it up.

Abare said do you have a problem with that? Reilly said no. Ritter said no, she can't imagine them parking it on this lot. She said there isn't any problem because they would not park on smaller lots.

Krieger read his draft version of first paragraph. Ritter said the first sentence is too long. It should be just owner. Abare asked Reilly to draft for next meeting and Krieger to draft his for next meeting.

Wilbur said then we can ask Council about the CUP. Ritter doesn't want to make people get CUPs.

Chair directed this to be on for action at next meeting.

**This was moved to Discussion Item #2**

**4. Consider Suggestions from Mayor re: RV Parking**

**Exhibit:** Agenda Report No. 4

**Recommendation:** Discussion

Krieger wanted this to be next since it was the Mayor's. They discussed Ritter's handout.

Krieger referred to Mayor's handout. He read from his marked up copy. Krieger wanted to change residential to non-commercial. They discussed his recommendation. See draft. Then went over Ritter's. Ryan, Wilbur and Abare liked Ritter's. Ritter said they can change residential to non-commercial. They liked #3 on hers. Krieger said it can be resolved with nuisance code and was not needed. Krieger said what about someone who is repairing an RV over time. That doesn't mean it is not usable. Ritter said it is not functional as its intended purpose.

Ryan asked about the example of a RV used for storage instead of a RV. If there is a complaint. Ritter said it should be a shed then instead of an RV. Ryan said for every law there can be found a way around it.

Krieger said strike #3. He gave example of hole in canoe that has not been repaired. Ritter wanted all the information available in that part for RVs without having to look up other sections of code. Krieger said instead say permanent unusable condition. Krieger said it should say it is expected instead of making it a regulation. He said if it is in back yard then it is no problem.

Krieger referenced the parking in right-of-way and said he can't park right now in any public right-of-way. Don't need that as it is already illegal. Krieger said they already reference the setback. Ritter said they need to have it all in one place. Krieger said then on US 1, on water side, you couldn't park an RV there in the right-of-way. Ritter said you can't get an RV on that side with the guard rail. Krieger said yes you can, if there is an opening. Ritter said it would have to be pretty big opening. That wouldn't go very well with people that have RVs and park in front of the MMA. Ritter asked how many do that? Krieger said it happens all the time, not permanently. Ritter said aren't they in the State right-of-way? Krieger said it's kind of like you can't have a RV park at the Yellow Dog because their whole parking lot is within the right-of-way. As a matter of fact their building is within the right-of-way. Krieger said right-of-way is a little different than setback. Ritter said that it would be dangerous to try and get an RV between the guardrail and try and back out. If you want to do it, she didn't think anyone would say anything, but it shouldn't happen on a regular basis. Ritter said that none of this will apply unless someone complains as we are a reactive Town, not proactive. Abare said this code would give the Town the right to fix a bad situation.

Krieger said what about a boat Captain that teaches sailing and has class at his house? Ryan said no home business can operate out of this. Ryan said we can look at both versions again next meeting.

Wilbur said why can't we have a decision now. No. They will submit for next meeting.

### **This was moved to Discussion Item #3**

#### **1. Continue Review of Checklist and Requirements for Ponds**

**Exhibit:** Agenda Report No. 1

**Recommendation:** Discussion

Discussion:

Reilly referred to the ordinance he provided and said he separated the two – decorative water features and ponds. He asked Board to look at note at top. Section 5-0.e is what he wants to speak about – page 43. He wants to get to hard part - disposal of excavated material.

Ritter said we need to define muck and what acceptable material is.

Wilbur said he would remove all of #1.

In D. no excavated material in a pond and remove ¼ acre since we got rid of this and pond is 1,000 sf. Abare said why give them an out. Krieger said if you are building a subdivision you can take as much dirt off site as you want. As a rural owner you don't have that right. So on your 20 acre site you should be able to take whatever you want. Krieger said the reason they started defining types of soil is to give them excuse to take it off property.

Abare said a truck load of fill used to cost \$300 and it was not unusual to spend tens of thousands on fill and have to wait on it. The reason for most to dig a pond is so they can use material for fill for house. Krieger said that a pond as part of house construction should not require any permit.

Abare stated fill is cheaper now and you can get it the next day. Abare referred to the guy that came in that is not building a house and asked what is reasonable to allow to take off site. Wilbur said it is not up to P&Z; it is up to licensed engineer. Abare said if we have no say then why not pass onto to engineer.

Abare asked who is going to make impassioned speech on why it should not be carried off. Reilly said if you build up your land and cause flooding on your neighbor.

C is a good one.

D. no excavated material on a pond may be sold. 3. Material that is not useable can leave the site.

Wayne said if you allow him to haul it off how do you know where it is going? Under D. Wilbur wants to include decorative water feature.

Under C. If the fill is surplus then under D. if he can't use the soil why can't he give it away? Should the town care what he does with the excess fill?

Abare suggests they get rid of D.

Wilbur said go back to E. and if Engineer states it is surplus it can be removed from Town; 300 truck loads is a lot of dirt. Abare doesn't think C. is any of our business; that's his opinion. Reilly sees his point.

Abare said the intention is for it not to be mined and sold. At \$90 a truck load you won't make a lot of money.

Ryan said he had pool put in and they had to take dirt out and haul it to landfill. When he realized his yard was flooding on his neighbors he called the pool contractor and had him drop off dirt rather than take it to land fill for his yard and he now fixed flooding problems.

Krieger said he probably affected 1000 sf and should have gotten a permit and an engineered site plan, etc. Krieger said if he goes to Home Depot and buys a small pool and digs a hole with a shovel and creates a small hole and puts in the small pool does he need engineering. Abare said that would not require permit. Abare said that it would be defined under DWF. Krieger said if he digs a hole for a mailbox and takes dirt to back yard has he affected the topography.

Reilly got Board back on track and said the pretense of 1-5 was to make progress on that section. Then went over the exclusions. Topsoil is not exclusion. There is no definition for top soil. Muck can be hauled off. You can't get compaction. There is a fine line between muck and topsoil. Muck would have organic material in it.

Reilly suggested going back to first page of ordinance; #3 town eng must approve removal of muck. Now done with his point so they go back to Pg 38.

Wilbur said staff should check Brevard Cty soil survey – they define the soil types. Different soil types. We will check online. Soil survey Brevard Cty – Denine will get info.

Pg 38 – Reilly said this is word for word from current code. He cut and pasted from Municode. Krieger has problem with wording. The Town is the body having jurisdiction; the five members. The engineer is another person of authority that has to be here.

Abare said if you want to do DWF you may need engineer to review application for trees or wetlands. They discussed the difference between developed land and undeveloped land. Krieger stated if you are not bothering your neighbor then whose business is it.

Abare said what about digging a pond in the center of wetlands. Krieger said then St Johns will cover that.

Abare said Building Official looks at the setbacks and then looks at the wetlands. Wilbur said you have to have oversight. If you want to put a plastic pool in then that is landscaping. If you are going to put in side slopes, then it is more than that. Krieger said Ryan has pond and there was no engineering. Krieger said he did his own engineering on his pond. He is a bit of an engineer. He said the Town now has an office of Town Engineer. What's wrong with using the building official or a Town official? Krieger said he would like to simplify things. Abare said we have had a Town Engineer.

Reilly said to skip past the definitions and go to pg 39. Ritter said 1 and 2 are identical. Do we need a permit for decorative water feature (DWF)? Reilly and Abare said yes. Krieger said it depends on the size and if it is covered by St. Johns. Krieger said if it is filled then it should not need permit. Reilly suggested they get off definitions or we would be here all night. Abare and Ryan thanked him.

Abare said there is a hole that someone used to fill with trash on property he is interested in and Building Official told him he needed a permit to fill it. Krieger said you can bring dirt in right now without a permit.

Reilly said they are split because they were going to have two checklists. One is simple and one more detailed. Ritter said have one checklist and for a DWF you go by the first 10 items and for a pond you go thru all 30 items. Ritter doesn't like the identical lists and suggested Board sort through them. Reilly suggested Ritter do as a take home exercise.

Reilly said he separated everything. Abare likes the separation.

Franklin said the Board has earlier agreed to a hand drawn sketch by applicant showing DWF location, setbacks, any trees in the area of the DWF and evidence that it is not in a wetland and then the Bldg Official could approve.

Wilbur said a pond required more engineering that shows slopes, and overflow and drainage pipe. Wilbur has no problem with making people think. There is a lot to take into consideration when you are considering this. How are you going to fill it? Krieger said a pond does not make more water. Water makes more water. Wilbur said what you do with your pond can affect your neighbor.

Krieger said wetlands on a developed 1.5 acre site are no longer wetlands. Wilbur disagreed and gave example of property on Atz that could only build on a small part of the parcel.

Abare said he has talked to DEP and they can't clear wetland. If there is a tree on property you can't remove the roots, even if it is an evasive.

RE: #4. Appeal process. Reilly put it together. 6,7,8 Reilly left alone. Wilbur said Reilly did a good job. They have fill in original code because you still have review if you are digging or filling.

Abare asked where are we going to put verbiage for checklist. Put in with permits? Or site plan. Abare said on pg 46 any place it has 1.4 acre change to 1000sf or less.

Wilbur said if you are going 6:1 ratio you are not going to get to 12feet deep for a DWF. Abare said change distance to 50' and only from drain field for DWF.

Discharge pipe – only for a pond. A DWF can only be 3' deep.

Does this need to be on checklist? You need this because you have to say what you are going to do with displaced soil.

Krieger said to use *detailed plan* instead of accurate plan and take out boundary survey. He said it doesn't have to be per scale for DWF. Get grid paper. Board disagreed with Krieger.

Location of pond or DWF needs to be on sketch and typical side slopes (DWF and pond) as it could be dangerous to children. Also proof on ownership. Franklin said the Bldg Dept is supposed to support itself and cost of Bldg Ofc is part of that. Board agreed to charge a fee.

Add trees location on sketch (8" or bigger) where DWF is planned

For Pond checklist add the following to the above list:

Easements – also add to decorative water feature

Wilbur asked if we need to ask for a topo survey – very expensive.

Yes if it is for a pond that exceeds a certain size – like a lake pick a size.

Wilbur said as technology progresses we can get topo on our phone.

GPS and Google will not provide accurate info.

Krieger said if it is built and bermed why need a topo.

Wilbur said a pond would produce substantially more fill to place in a yard,

Krieger asked to table Agenda Item #5. He does not think the item will be back.

**MOTION: Krieger / Ryan to table until such time as we want to bring it back.**

Discussion: Wilbur wants to keep it on for action. Reilly also.

**Vote:** Aye, 2 (Krieger, Ryan); Nay, 3 (Wilber, Reilly, Ritter)

Motion failed 3 to 2.

Items not covered:

3. **Define "Light Industrial" Zoning**  
**Exhibit:** Agenda Report No. 3  
**Recommendation:** Discussion

4. **Recommendation to Council re: FLUM Changes**  
**Exhibit:** Agenda Report No. 4  
**Recommendation:** Action

**I. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**

5. **Code Requirements for Assisted Living Facilities**

**J. PUBLIC:**

Thomas Eschenberg: Mayor wanted to comment on their discussion on ponds and RVs. He asked the Board if he had a ten-acre piece of land and built a five-acre pond and sold all the dirt, how does that affect my neighbor or the Town. Ritter said the land is here forever and people aren't. Why should they be able to change topo?

Re: RVs – he likes Krieger's version best with the addition of the Florida Statute definition up front and change to CO (certificate of occupancy) at the end.

Mayor said regarding Ritter's version:

#2 is not necessary as it is already illegal.

#3 is covered in nuisance code

#1 insisted on keeping ROW in there the word within means he can park partially within.

**OLD BUSINESS/NEW BUSINESS:**

Krieger asked for update from staff on recent presentation regarding riverfront. Franklin said Park Board Member Bunnie Knudson made presentation to Council last week about a property on the riverfront that is for sale for possible recreation area. The Park Board has made a recommendation that will go for action at the February 6, 2012 Council meeting. There will be another presentation then.

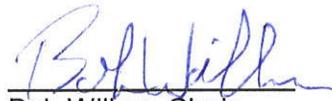
Krieger said somehow it went through the Park Board and since it involves land use it should go through this Board.

**L. ADJOURN**

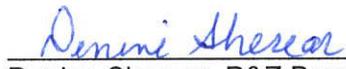
There being no further business to discuss, **MOTION: Reilly / Krieger to adjourn this meeting.**

**Vote: All Ayes.** The meeting adjourned 10:25 P.M.

BY:

  
Bob Wilbur, Chair

  
Debby Franklin, Recording Secretary

  
Denine Sherear, P&Z Board Secretary

2/8/2012 as corrected  
Date Approved