

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
APRIL 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:	PAT REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN
	LIZ RITTER
ALTERNATE:	WAYNE ABARE
ALTERNATE:	CINDEL ZINDEL
BOARD SECRETARY:	DENINE SHEREAR
RECORDING CLERK:	DEBBY FRANKLIN

C. ADDITIONS/DELETIONS/CHANGES: none

D. CONSENT AGENDA:

1. **Approval of Minutes Planning and Zoning Meeting—4/11/12** – not ready

E. PUBLIC HEARING: none

F. PUBLIC: none

G. ACTION: none

H. DISCUSSION:

2. **Continue Review Checklist and Permit Requirements for Decorative Water Features and Ponds**

Exhibit:	Agenda Report No. 2
Recommendation:	Discussion

Discussion:

Regarding the code, Reilly copied everything the same and kept them (DWF and ponds) separated up until page 9/45, Section 4.0, Appeal process because it should be the same process for both. Reilly thought they should go through the overview and then review the checklist. He reminded Board they had previous discussions regarding the bottom of pg 10, 5.E, disposal of excavated material. Ryan said on page 4/45 under definitions for construction debris, it says "no" instead of "not".

The Board discussed language and grammar in the code. Reilly explained that the parts being referenced for grammar changes are in the existing code. Reilly said once they go over the checklist for DWF and Ponds the code language will change. Reilly said once they review the checklist much of the code language could be deleted. Ritter said the language refers to a site plan and thought they simplified that. Krieger did not want permit fee for DWF. Ritter said the code should provide the information on the checklist. Reilly said they could just reference that the applicant must submit criteria on checklist. Reilly said the DWF has 8 items on checklist and ponds have 11, so it is shorter.

Ritter wanted to go back to the beginning of the definitions and said the structure of paragraph is redundant. First sentence should not say construct or fill. First sentence should refer to construct and second sentence refer to fill. Ryan is not clear on fill; did it mean fill with water? No, fill in an existing DWF per the definition.

They are saying to rewrite this part. Reilly said go to your checklist and use that language; you could get rid of 1 2 and 3. Code said topo should be required. Abare said filling an existing DWF should be a simpler process but still needs review and permit. Krieger likes separating the little thing and big thing. He crossed out most of Section "A" and "B" and most of code under DWF. He doesn't want Town to charge for DWF as there is currently no charge. On page 5/45 of packet, Section 2.1, line 2. Construct or fill. Yes permit is required for both. It was in the original code.

Wilbur explained why people may have constructed a DWF or pond in order to get fill for house pad. Ritter said add the word existing in front of DWF or pond in reference to filling; that will make it clear. Ryan asked where Reilly wanted to get to - what they do with excavated material. Abare said they are stumbling over the filling of an existing pond or DWF. Abare said if you mess with wetlands the FDEP will get involved. The Building Official has already done this and got in trouble. It is important for Town to look at these things. Wilbur said in a perfect world you could let people do whatever they want. But you can't do that now. Need to figure out what the short list is. Checklist is on pg 13. Krieger debated that the town will not get into trouble with FDEP. Krieger said the code refers to the town engineer. Krieger said the town engineer should not be referenced. We did not have an engineer in the past and may not in the future and you are creating too much bureaucracy. Krieger said if you are not affecting the neighbors you should be able to construct or fill. Abare said he looked at a property and it has a small wetland on it and he could not even mow it. Abare thinks the Town would help people out with these things.

Krieger said you should have another definition for a water body. Abare is asking Krieger what he is saying -- less than 1000sf no permit? Don said there should be no charge and no permit if it is part of construction of house. Abare said it should not be about trying to trick the Building Official. Ritter said you have some developers that have cleared everything. The idea with the trees.

Chair Wilbur said they are digressing from agenda item. Abare said Krieger is entitled to his opinion. Wilbur said in November 2011, disposal of the material shall be onsite for any pond where a permit is required. Wilbur said there must be a certified letter from an engineer (pg 11) stating it is not suitable, it does not say town engineer. It can be any licensed professional engineer. Ritter said under 3 on same page, unacceptable material if approved by Town Eng? It conflicts. The Town eng can review the professional engineer's written assessment. Ritter said you should have the option to get your own engineer but it has to be approved by town engineer.

Wilbur said if they don't want to use Town Eng, they can get something from a certified licensed engineer. Put it in both places and add the choice. Krieger said that if you have them sign an affidavit that says they won't affect their neighbor's property should be sufficient. Reilly said change it from engineer to town bldg dept on pg 5 and 6.

Ritter said add "existing" in front of DWF and pond in reference to fill.

Abare goes back to beginning. 5/45; are we going to keep it? Krieger took out fill in first paragraph. He does not think fill should be part of DWF process. Reilly, Ryan and Wilbur state fill should remain in code. Add "existing". Krieger is outvoted. Krieger said the more precise you make it the harder it is to follow. The concept is to get your building done so no one in the future can do what you did.

Board begins review of code at application for DWF. There is no application fee for this. Permit fees are under a resolution that Council sets. Abare said under "a.", the second sentence could be scratched. Lawyer wants it in there. Leave it like it is per Abare. Then "b", the following info should be provided: per the checklist. Show tree location; it is on the checklist. Abare thinks that is too much work for applicant. Wilbur says they are trying to make it simpler and Krieger is trying to make it too simple. It is in there for a reason.

Franklin suggested using the checklist and marking up the code to conform to the checklists; staff could do for next meeting. Wilbur said Board wasn't asked to change code; they were tasked with dealing with ¼ acre ponds with no permitting.

Abare said on page 5/45 they are going to throw out requirement for proposed elevations. Wilbur said what about keeping that in; a builder's level will show that elevation. Wayne said you are not going to get real topo data that way. Wilbur said Brevard County Soil Survey will also give topo info. Reilly said they were not going to require a full blown site plan except for ponds.

Abare said what they talked about is showing a sketch of the boundary of property and road and trees so they don't have to hire an engineer and the Building Official shouldn't be making him get topo info.

Ryan said for 1000 or less DWF, you get drainage this way during normal periods and then you get a big rain and it fills up and goes another way. Reilly said 1000sf can be a size of 33' by 33'. Krieger stated he has a pond that is 50 by 20 feet. Wilbur said it can't be 12' deep due to the side slope requirement. Wilbur said even on small DWF by the time you spread out your excavated material you have affected that area. Krieger said you have to tell how the water is going to go when it overflows. What are you going to do with that? If you make a berm around it. Wayne said Roger would tell people to not put it in the swale. Ryan said when they put in his pool he had them put the fill in the swale on the north side of property that was low.

Zindel said a small DWF should not require a site plan because it conflicts with Art VII; under 1000 does not require a site plan. The berm will keep the fertilizer from running in to the DWF.

Krieger said if the town wants to be helpful they could include this information and that would be a friendly town. Abare said it does require a drawing. Chair Wilbur said lets go to 13/45 the checklist.

Ritter went over the definition again and wants it's stated to construct in first sentence and then the second sentence to fill. Don said it should not reference fill at all. Bob doesn't have problem with any of it. Bob said a permit is needed for both. Or get rid of the second sentence. Bud said eliminate second sentence. Bob said it needs to be there.

Wilbur gave example of someone trying to fill DWF with junk from yard instead of approved fill material. That is what we did in the good old days.

Reilly said let's talk about the 8 items.

- 1) Download dwg from PA office. -- Why does it say heavy line?
Liz wanted to go back to definition first. Either change sentence 1 or add a second sentence. Majority agreed that a permit is required. Wayne said they will not be confused. The next line explains it. Bud and Bob and Wayne agree. They understand her point of view. They can go over grammar later. Want to get to meat. Back to #1. ie. Sketch, property survey, aerial survey, plat map.
- 2) Dwg showing location (add)
- 3) Ok
- 4) Id of trees -- add impacted by dwf impacted area.
- 5) Location of well -- add (s) could be multiple also for drainfield(s)
- 6) Location of wetlands. That is important. Don disagrees. Pat wants a lawyer's opinion. He thinks there is a minimum threshold and below that they are not involved. Abare said it could be any size. Bob said the fill matl could be used and that would impact the upland area and that the fill does not affect. Pat wants to know what the cutoff is for wetlands. Pat said take an action to have clarification for the minimum threshold for both DEP and St Johns and that will fix that area. Staff will contact both agencies and get clarification on minimum threshold for them to get involved.
- 7) Plan to use excavated material and overflow plan and make it simple.
- 8) Don't Combine with 7. Summary is leave separate. Stormwater plan. They want to know if the water from overflow is going to go to the ditch or does it go back into the pond or into a skimmer or what. Wayne said you have to get a degree in civil eng to complete

this. We should be providing examples. Just show you are not going to have runoff. Bob explained sheet flow and if you build it up you may be adversely affecting the flow of stormwater. Krieger said water runs off your property goes to the swale and that is not going to change. Wilbur said you are going to dig a hole and if the DWF is built then you are creating more water and you have to demonstrate what you are going to do with this extra water. Abare said add the words to say you must have a valve and you can't let it run. Reilly said add it to definition to the drainage plan.

Wilbur is all in favor of letting them do this but have to ensure there is not an adverse impact to neighbor's. Abare gave example of when neighbors sue each other and Town is called in. Krieger agreed and said they should mark up a sample property in different zonings and show how the house and DWF are going to be. Ryan said come up with a typical application and use for an example to give applicants. Reilly said who is going to do the drainage plan.

Franklin said that the requirements are in the code and the process is in code and it has been enforced at least since 2004. No construction project can adversely affect the stormwater on an adjacent property. Even for single family home construction the applicant shows on the site plan where the trees are which will be removed, all proposed construction, and how the stormwater will drain after holding the first inch. That was not done in the past.

Abare said he would come up with an example. Franklin said that staff already provides applicants with samples of a pond application. Abare will provide something showing the stormwater drainage. Abare will pretend to be an exasperated applicant.

Zindel asked about free-flowing wells and also about restrictions on watering. Some Board Members thought the restriction didn't apply to wells or irrigation by ponds. Wilbur mentioned the requirement for a Consumption Use Permit. That is for large wells. You can't let it run. You have to have float or valves. Abare gave example of a property in Malabar where the neighbor had well and let it flood his property for years and now it is a protected wetland. Wilbur said by building it you are creating wetland area that is then protected and you can't fill it.

Krieger gave example of natural filling the DWF with leaves; would that be considered fill?

Reilly wants to go to Section E. on pg 6 and said this section should be eliminated. Abare said bottom of pg 5 and top of page 6 will change after they see his example. If example and checklist give enough info then they can be eliminated.

Krieger said back to the permit application. If he is going to Home Depot for one of those little things, is a permit required. He still doesn't know where the 1000 feet came from. He thinks 500sf or less should require nothing and the 1000 should be increased to 1500. Franklin said much of what Krieger is referring to is considered landscaping and would not require a permit.

Board started discussing above ground pools and if permit is required. Franklin said yes permit is required and there is a checklist. Krieger asked for philosophical purposes, what about the effect on stormwater systems caused by installations of these pools.

Board will end for this meeting and pick up at next meeting with Abare's example. Chair Wilbur said they will finish up on DWF and move onto ponds at next meeting.

3. **Define "Light Industrial" Zoning**
4. **Code Requirements for Assisted Living Facilities**

I. ADDITIONAL ITEMS FOR FUTURE MEETINGS:**5. Discuss Procedures for P&Z Excused Absence Policies****I. PUBLIC:**

Tom Eschenberg, Beran Lane, as he watches this agony on ponds and DWF he forgot why they were doing this. P&Z Chair said they were charged with this and Eschenberg asked who charged them.

Abare said Town Eng pointed out that 1/4 acre pond could result in 300 loads of material being removed. Wilbur said a contractor came in wanting to build a pond just less than 1/4 acre in size on parcel adjacent to the one his house was on. He wanted to use some of the fill and haul off the rest. There were wetlands on the parcel with the home.

Franklin said issue started earlier when problem came up in Building Department and they saw the conflict between Article VII requirement for site plan for projects exceeding 1000sf and the amended pond code stating ponds less than 1/4 acre required no permit. It went to Council and Council pulled it from agenda as it involved land use and needed to go to P&Z first.

J. OLD BUSINESS/NEW BUSINESS:**• Council Responses to PZ Recommendations**

Reilly summarized his appearance at Council on April 16 on the two P&Z recommendations. Council tabled the setback recommendation. Regarding the recommendation on R/LC Council asked the Board's reasoning for going from 6 to 4 in density. He stated they did it for density purposes to keep with rural character and using 4000sf and 6 per was more than half the property.

Reilly said Council asked why they were suggesting going from 500 to 900sf for one bedroom multi-family. He didn't really have anything for that. Council said when P&Z makes a recommendation to Council they would like to have the reasons for those changes.

Put on agenda for next meeting. They are advisory they just make recommendations.

Franklin said we have had a resident ask about the recent article in Florida Today on chickens and how the county is considering allowing more than one chicken in residential neighborhoods. He stated the County had a prohibition of roosters in those neighborhoods. He is bothered by a neighbor's rooster. I explained that chickens and roosters are considered agricultural and RR-65 is the only zoning that would allow such creatures. Does the Board want to discuss providing more specifics on the types of agricultural animals?

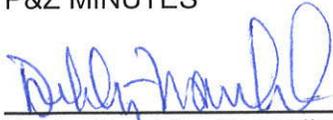
Also the Fla Today had article on the mobile food vendors and how cities don't know how to regulate them. They respond to social media and set up at different locations without advance notice and are gone after the lunch or dinner hour. They have become quite popular in south Florida and are moving up the state. Melbourne Council has directed their staff to come up with suggestions on how to regulate.

Sherear said the Palm House has finalized the purchase of land on other side of RR for addition to nursery. Franklin said staff mentioned this at previous P&Z that the Building Official and Engineer would be reviewing this as a minor site plan and it would not be coming to P&Z.

L. ADJOURN

There being no further business to discuss, **MOTION: Reilly / Ryan to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 9:48 P.M.

BY:



Debby Franklin, Recording Secretary



Denine Sherear, P&Z Board Secretary

5/9/2012 as corrected

Date Approved


Bob Wilbur, Chair