

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING  
APRIL 10, 2013 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 by Vice-Chair Pat Reilly.

**B. ROLL CALL:**

CHAIR:	VACANT
VICE-CHAIR:	PAT REILLY
BOARD MEMBERS:	BUD RYAN
	DON KRIEGER
	LIZ RITTER
	GRANT BALL

ALTERNATE:

ALTERNATE: LEEANNE SAYLORS, LATE

BOARD SECRETARY: DENINE SHEREAR

TOWN PLANNER: KEITH MILLS

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

Reilly asks Sherear if she had heard from Leeanne. Sherear replied that she had not heard from Leeanne, but she had not checked the phones. Reilly said to please put down as "unexcused".

Reilly, on "E" where it says "Public" it is really suppose to say "Public Hearing"- from now on it should say "Public Hearing"not "Public".

**D. CONSENT AGENDA:**

1. **Approval of Minutes** Planning and Zoning Meeting – 02/13/2013

**MOTION:** Krieger/Ryan to approve minutes of 02/13/13 as corrected:

Ball's corrections are as follows:

Page 3/24 1<sup>st</sup> sentence under "C" tonight=tonight's; 5<sup>th</sup> sentence Board=Board's.

Page 5/24 1<sup>st</sup> word verses=versus; 2nd paragraph whoever=whomever; 2<sup>nd</sup> paragraph from bottom 1<sup>st</sup> sentence things we do not want=things we do want 2<sup>nd</sup> line ...of what we do want in that zoning...= ...of what we do not want in that zoning...

Page 6/24 7<sup>th</sup> sentence down word=Word

Page 7/24 3<sup>rd</sup> paragraph last sentence then=than

Page 8/24 1<sup>st</sup> paragraph 2<sup>nd</sup> sentence then=than; last sentence add after land use and zoning

Page 9/24 4<sup>th</sup> paragraph nitch=niche

Page 10/24 2<sup>nd</sup> paragraph from the bottom non for profit=not-for-profit

Page 11/24 1<sup>st</sup> sentence residences=resident's; 2<sup>nd</sup> line Resident=Resident's & then=than; 2<sup>nd</sup> paragraph 2<sup>nd</sup> line risers=rises

Krieger corrections:

Page 5/24 7<sup>th</sup> paragraph is=are

Page 11/24 1st paragraph 2<sup>nd</sup> line visited change to visiting

**VOTE:** All Ayes.

**E. PUBLIC HEARING:**

**F. ACTION:**

**G. DISCUSSION:****2. Continue Review of Code Language for "Light Industrial" and Recommendation to Council**

**Exhibit:** Agenda Report No. 2  
**Recommendation:** Discussion/Action

Reilly explains to the Board that he is going to take about 5 minutes to bring Mills up to date with some history on this Agenda Item.

Reilly is explaining in tonight's packet you have proposed "Future Land Use" changes. Reilly is referencing pages from this packet:

- Page 4 on the west side of Babcock Street by Booth Lane on the present land use you see "CL" this area is a perfect area to change from "CL" to "LI" which is Light Industrial. Bob Wilbur, past Chairman of this Board, thinks if we can get Foundation Park Blvd extended in this area we can develop the area, very hard due to land use of "CL" which is Commercial Limited. There is water on the west side of Babcock Street, so we could get city water in this area.
- Page 9 north & south side of proposed land use, on west side of Railroad tracks, in order to get up in there you have to use West Railroad Avenue by dirt road, presently it is all "CG", Commercial General, we are trying to give it a different land use and maybe someone would be interested in developing this.
- Page 11 on West side of railroad

Leeanne arrived 7:44PM

Reilly goes on to discuss Article II Land Use Zoning, page 53 in Code Book, for the residential zoning districts we have density as the criteria, actually for land use we have density so we have for residential:

- Low density
- Medium density
- High density

Then for land use, so many people per acre, i.e. RS-21, RS-15... if you do commercial there is not really a density segregation of CL, CG, and that is why we wanted to introduce "LI" as a lower density. This is the premise of what the Board has been trying to do for a year.

Reilly goes on to explain there is two sides to this issue, our Code is ok as it is we don't really need to distinguish commercial based on density & impact to neighborhood, or few people think we should come up with this "LI" so we can have a lesser density and less impact to neighborhood, so the problem is whenever anyone comes into Town to put up anything, they look in Code Book to see what designation it could go into. There is a lot of overlap, based on what the building official thinks that it would fit into. The Board is trying to look for direction on whether our Code Books are ok as they are or is it advantageous for the Town of Malabar to have this new designation called Light Industrial (LI),

Ritter asks and if there is some way we want a "flex zone" what we would have to do for that, or is that multiple uses in that same area, just highest to lowest in that zone.

Reilly explaining we are not changing the zoning at all, we are just trying to come up with a land use , the LI could go under CL, we not changing land use we are changing the zoning I guess. In

order to that we have to change Article III also in our Code Book. We would have to come with a paragraph and what it is and describe "LI".

Reilly came up with what does CG, CL, and what does LI mean I tried to see what the major difference is between the three. If there is no difference between them, the only thing is density and impact to the neighborhood; we really don't need the 'LI'. We looked at other Towns like Satellite Beach & Indian Harbour Beach. I don't see a discriminator that tells me that 'LI' is needed. We can get by with what we have.

Ritter suggests maybe we could put in a paragraph any restriction and amend what we have.

Mills asks Board are you trying to put traditional industrial uses into a commercial zone.

Reilly explains it could be, it is the shop and personal "mom & pop" shops, Leeanne has a whole list. Ritter adds the small retail shops that deals with the "end user".

Mills comments that small retail businesses are already allowed in CG zoning. Leeanne comments that Pat is trying to get at do we really need to add another type of zoning or are what we are trying to accomplish already accomplished.

Mills responds that you are trying to create areas in the town that would be appropriate for LI type uses. Ritter adds it sounds like Limited Commercial.

Saylor, explains that Bob Wilbur was trying to accomplish in the I-95 triangle area off Babcock Street that we could attract LI or LC to try and make things more attractive and bring to these areas more of a tax base, in the areas that would not impact our rural or residential areas. I agree with Pat that it might already be covered in our Code.

Reilly adds that if you think of this like residential, how many people per acre, so I don't know how to relate it, if there is a way to relate industry or commercial- intensity maybe.

Mills comments that the intensity is not easily measured as residents, it is usually traffic or how much traffic – if you are trying as an example to find Light Industrial, you can go by example Bob Wilbur submitted, if you are wanting to allow uses like warehousing & wholesaling you cannot have a zoning district from the top down on the table. If you want allow all the uses that are in "CL" in this particular area, then you would just have a paragraph that would state "Any use allowed in the "CL" is also allowed in this area". Ritter asks how you would restrict some activities and Mills responds that you would structure the zoning district if it is going to be a new one and you wouldn't include what you wouldn't allow.

Reilly talks about page 13/16 in Agenda Packet, summary of Commercial Zoning presently in our Code Book.

Mills explains that you are mixing uses. The "CL" the very name suggests less intense type uses, if you want to mix & mingle # 1&2 on page 13/16 under "CL"

Krieger asks about page 13/16 says top line says zoning; it is land use not zoning. The Light Industrial has brought us to page 53 in Code Book. Krieger explains that he looks at things in an intensity format and what is the most complex intense land use and what is the least. I believe the least is Rural Residential formally RA (Rural Agricultural), was changed in early 80's. Krieger is going through Table 1-2-.2 left side only "Future Land Use Map Designations". The point is we are trying to flex between higher & lower densities in the business areas.

Krieger asks Mills about this area over by Babcock Street couldn't we have defined the whole area as a "flex area" and if we had land uses in terms of their intensity say, this is the land use we prefer but you can go to this higher or lower use if you go through the proper procedures. This would give more flexibility to the people from the outside looking in.

The Board is discussing the CL to LI Land Use. Reilly explains the "FLUM 9" is present Land Use Map.

Mills discussing that we are increasing the intensity from CL to LI

Mills discuss with Board that you can make a flex zone, but the CL was set up in mind to do what it says in the book you are going to have CL in other parts of the Town, you can't just mix into existing zoning categories for specific pieces of properties. You can do flex zoning in one area but you have to create that zone. You can't take an existing zoning category.

Krieger is on page 53 of Article II Table 1.2-1 discussing Industrial on left side and right side industrial and on the right side have a sub section of light industrial.

Mills, simple answer is yes, jurisdiction have different way of doing things, most jurisdictions have upload or down load zonings, industrial is the most intense and maybe the most objectionable to residents typically not new to residential, but most jurisdictions have traditionally limited those uses in the industrial district to those more objectionable uses, other jurisdictions do import either all other uses that might be in a zoning category, less objectionable or some of that. Yours is the more traditional type where each zoning category kinda stands on it own. But you're using the term "flex", the Town has used the term "mixed use". A lot of times "mixed use" is used with residential & retail use.

Mills, you have an existing industrial zoning category, some of the things would be to eliminate the objectionable parts of the existing industrial zoning categories, then those are going to be allowable uses in this area as well.

Krieger comments that outside the Town of Malabar, technically looking at these charts what really should be designated as for land use is industrial but the zoning should be light. What this chart is doing is saying "LI" but "LI" is not a land use, our intent would be a zoning. Pat says it was going to be both, land use and zoning.

Reilly explains that LI would have to go on both sides of Table 1-2.1. If you have med. density residential and have three separate zoning districts within medium density then, we have two for high density and one for low density.

Mills comments that you could create a zoning district and probably use sub categories, you might be able to say that both may be allowed under both land uses under industrial land use, you would have to make sure the way it was legally written, it would have to cover all bases.

Ritter suggests putting under CL or CG and changing CL to LI. Reilly adds that it would be a sub set of CL

Mills, the first scenario you are allowing a less intense use in an area that would not accept that use. Then you are saying you are going to allow a more intense use that is over and above what the allowable.

Ritter adds if you put the LI under the CL zoning part it would allow both. Mills stated that the land use regulations limit the way it is not it would limit the things that aren't allowed in LI. You would have to revise your CL land use to incorporate everything.

Reilly, talking about Land use in Article II it describes what things are and how they are based by how many acres they have. If you go to Article III it defines each one.

Reilly asks Mills if you use the same analogy to go to commercial can you do this. Mills responds for example if you have RS 21, you can allow any number of units per acre less than that.

Ritter comments that creating a new land use would allow CL underneath it, the land use for LI and zoning put LI & CL.

Mills, comments to Board starting off with an industrial land use and fitting what you want for commercial limited into that is easier to do if that is your goal.

Krieger has a question about Planned Urban Development there is commercial and industrial. Could we leave the zoning as it is today and have the whole area to give property owners to use their land as a Planned Commercial, called Commercial PUD, it would give people the possibility to do what they want on their property. Mills, comments that it is possible but you have to look more into things. Krieger if you change the land use to PUD "C" or PUD "I" could the people that come in proposing what they are going to propose can they work towards a mixed use? Mills stated that PUD's don't traditionally allow mixed uses.

Mills is reading out of Code Book page 54, about PUD designation and putting on the map.

Krieger , I am still thinking that less is more in this case if the whole area was brought up to give future people the opportunity to come in.

Mills looks at Article IV and the PUD regulations, you have to look through to see what is in there, and it already exists.

Krieger, Future Land Use is not taking something away from someone. This is not land use it is land use and zoning.

Mills, page 182 PUD Commercial (reading out of Code Book) go into IND.

Reilly by creating a PUD, you cannot change the intended land use and zoning of what it was.

Ritter suggests that you could still do a PUD you could do it in area off Babcock St."CG" and wrap it around but if you make that the LI includes that includes the CL you could still do the PUD.

Mills comments to Board that you would have to follow what is in the Code.

Krieger we are adding in District Provisions.

Mills stated if you change the land use you are not required to change the zoning.

The Board is discussing with Mills, about Foundation Park Blvd & presentation given about Industrial Park area, that there is city water available. The access to the area properties would come off of Osage, which is off Babcock Street,

Krieger if you look at proposed land use and go north in triangle area could it be a future PUD, Mills responds it depends on what your regulations say.

Ryan, adds that a couple of land owners in the triangle just want to enjoy their land and not do anything with it, just sit and enjoy nature and not interested in doing anything with the land.

Reilly discusses area over by railroad tracks, with LI. There is no road to gain access on the west side of railroad tracks, so they would have to come by way of Jordan Blvd and build their own roads. Page 11 of Future Land Use Maps.

Mills, states if property does not have access that would be a problem until someone gained access. Ritter comments that you could extend Glatter Road to railroad tracks, there is an easement there. Mills said there is a partial ROW or complete ROW.

Reilly will send updated Future Land Use Changes with current date and changes.

Leeanne suggests if someone wanted to change their property use they can come before the Board on an individual basis.

Reilly and Ritter making recommendations for Options:

Option 1: Nothing

Option 2: Put LI on both sides future land use & LI zoning district (Jan 9, 2013)

Option 3: LI for land use and LI and CL on zoning side (update Art II & III)

Option 4: PUD overlay for area, (Article IV)

Leeanne suggests inserting different options into Table 1-2.1 in Art II for the next meeting,

Mills comments to see if the present PUD requires min. lot size. Homework read PUD Art IV

Mills suggests reviewing Art IV if you are going to make this an "option", Industrial PUD & Commercial PUD as well.

**Reilly due May 8**

**Mills leaves at 9:10 PM**

**3. Code Requirements for Assisted Living Facilities** (no discussion by Board)

**Exhibit:** Agenda Report No. 3

**Recommendation:** Discussion

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

**I. PUBLIC:**

Juliana Hirsh, the way I feel if anyone comes in here it is too confusing with some plan in mind, multi-family, it makes no sense for businesses.

Reilly explains we have issues because we have no city water; it is easier to build in Palm Bay as they have the infrastructure. Hirsh says the way it is written now it is controversial between zoning & land use, building is expensive and time is expensive. The cycle has turned and it takes years. It is critical and the Boards should consider what it takes to get things off the ground for building.

**J. OLD BUSINESS/NEW BUSINESS:**

Ryan, for at least the past year or a little longer we have had the luxury of having two secretaries here and I looked it up in the Municode and it only requires one. Maybe Denine should take over the function completely. Maybe we should have one person doing it. If there is a cost to the Town we could reduce that cost as well.

Krieger states it depends how you run your committee and you're correct the Code states, technically, you could pick someone off the street to be secretary the way the Code is written. Traditionally it is someone from staff,

Sherear spoke up and referenced that Debby has been at the meetings with the history she presents to this Board and I do not have that history.

Krieger adds that we are going to have to have an organizational meeting and that will be the appropriate time. Ritter adds that she had asked Mayor Eschenberg earlier and he told her Debby is salaried so there is no additional expense. So if she is salary and chooses to come to meetings there is no additional expense. Grant comments it is not fair to her if she is doing double duty and doing it for free. If it is expected for her to do and she is salary that is not right. Ryan adds that also the times that Debby has not been here, Denine did a good job. I don't see any reason for duplication.

Reilly states that once we get a Chair and Vice Chair we will bring up and meet with staff.

Board discussed they received email from Bonnie concerning 2700 Malabar Road, AAA Malabar Storage. Krieger said there was no body to the email. Leeanne stated her understanding of email and septic system & hay trailers are sitting in the right-of-way. Ritter adds about Kempfer's septic being in the right of way and Ryan adds about the side gate for the storage was for emergency entrance/exit and has been used constantly.

Sherear tells Boards members about SpringFest coming up on Saturday April 13<sup>th</sup>, 10AM-4pm and 5K & 10 K following.

Krieger asks a question of Denine, as of last month, I remember being told last month by you & Debby that our next meeting was the 16<sup>th</sup>, and therefore the first meeting, tonight's meeting was not to occur. I had to go through a lot of changes in my schedule in order to make this meeting. How did this meeting tonight come about since we have two other meetings scheduled for this month? And is the last meeting of this month going to be expunged? Or what? How did this meeting tonight come about? Sherear responds there was some confusion when that was all going on back when the emails where going back and forth about the March 18<sup>th</sup> meeting. It started when the March 18<sup>th</sup> meeting was cancelled and then we were questioned by a Council Member about the April 10<sup>th</sup> meeting, which is today's meeting. Because when I talked to Pat about cancelling the March 27<sup>th</sup> meeting and nothing was said about the April 10<sup>th</sup> meeting, my dates were mixed up. So that is how it was cancelled up until April 16<sup>th</sup> meeting, when we could have an Attorney present. Today was a regular scheduled meeting we just assumed to cancel until April 16<sup>th</sup>, and how it was brought about a Council Member asked about the April 10<sup>th</sup> meeting. Reilly asks which Council Member? Sherear responds the Mr. Jim Milucky had come in and asked about the April 10<sup>th</sup> meeting. Krieger comments that he had the 16<sup>th</sup> in his head and didn't realize it was going to be a Tuesday and later on I had heard we are going to have a legal things there, then I passed by the Town Hall pretty much every morning and was wondering about the posting of the 16<sup>th</sup> one of the two items coming before this Board, Last week I noticed a new sign up, it was something I never heard of before because up to that time I had not received any information on it. Don't we have some rule that the posting have to be up a month or 30 days prior to the Public Hearing, I am almost positive that that was not there the weekend of the 16<sup>th</sup>. Ritter adds that they are advertised

ahead of time. Krieger thought that a few years ago we changed the wording of the Ordinance about the posting of the sign because it came up with the assisted living facility and they had to have it up 30 days and I want to make sure. Sherear adds it was up 30 days, there was a smaller sign by driveway and within a few days the larger sign was placed. Krieger asks how is that verified. I can see if the day the small sign goes up that an email goes out to all Town Council Members and all Committee Members and even Park Board Members that "a sign went out you might be interested". Krieger just wants to make sure the public has been properly informed. Sherear explained that the legal ads had been placed according to Town procedures in the Florida Today local newspaper. Grant comments that someone else has to verify when the sign when up, Krieger adds that there has to be a record of when sign when up. Sherear says there are pictures. Krieger asks who put the sign up and Sherear responds the applicant of the project.

Ryan, with regards to your question why this meeting took place, do I understand that it wouldn't have taken place unless the Councilman called. This meeting tonight that suddenly showed up. Sherear explains it was a miscommunication as well. Ryan says it wasn't scheduled then it was, apparently it was Mr. Milucky that caused that to happen, is that correct? Sherear stated that he had come in and asked about meeting. Krieger asks how did it go from that point to generate a meeting, what where the steps involved. Sherear responds, he just asked about the meeting, it was a regular scheduled meeting and he asked. I contacted Pat. Leeanne comments, that all he asked why was it cancelled. Reilly adds that we were not supposed to have a meeting until a lawyer came to it. Krieger goes on to say that essentially you called up Pat and he agreed to have a meeting. Ritter asks why March meeting was cancelled, Reilly responds that he was out of town and nothing was pressing. Leeanne asks if we had a quorum for that meeting. Pat responds that we don't know.

Reilly to discuss the April 24<sup>th</sup> regular meeting, Krieger makes a motion to cancel it,

**MOTION: Krieger/Ryan To Cancel the Regular Scheduled P&Z Meeting for April 24, 2013 @ 7:30PM. ALL VOTE: All Ayes 5.0**

Krieger comments that we will already have had two meetings in April. Leeanne comments that our homework for our PUD is May 8<sup>th</sup>.

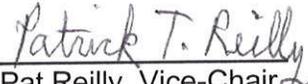
Reilly explains that we will elect Chairman & Vice Chairman at Tuesdays Meeting.

Sherear tells Board that before they leave tonight, I have packet for April 16, 2013 for you to pick up.

**K. ADJOURN**

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

BY:

  
Pat Reilly, Vice-Chair

  
Denise Sherear, P&Z Board Secretary

5/7/2013  
Date Approved: as corrected