

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
OCTOBER 9, 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 Chair Pat Reilly.

B. ROLL CALL:

CHAIR:	PAT REILLY
VICE-CHAIR:	LIZ RITTER
BOARD MEMBERS:	BUD RYAN
	DON KRIEGER, EXCUSED
	GRANT BALL
ALTERNATE:	DICK KORN
ALTERNATE:	LEEANNE SAYLORS, EXCUSED
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES:

MAYOR CARL BEATTY
COUNCIL MEMBER WAYNE ABARE

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA:

1. Approval of Minutes Planning and Zoning Meeting – 09/25/2013

Grant, Page 4/33 1st parag. last sentence except should be accept
Ritter, Page 4/33 4th parag. 2nd to last sentence ~~extended this all to~~ should be "extending this all to"
5th parag 2nd to last sentence add after ... this within 1,000 sq ft
6th parag 2nd sentence want = wants
Ritter, Page 5/33 2nd parag. 8th line Tables are going to take care of the rest.
4th parag. 2nd line he = the , Grant 4th parag 1st line faculties= facilities
Grant, bottom of page residence/bed= resident/beds
Grant Page 6/33 1st parag 2nd line residence/beds = resident/beds
Ritter 1st parag last sentence over=in
Ritter 2nd parag. 1st line what = would
Grant 2nd parag. 4th line add is after control...
Korn 8th parag. 1st line and = an
Ritter 2nd parag from bottom last sentence add make it after can..
Ritter 10th parag 3rd line add and after 650 sq ft
Ritter, last parag. take out rural
Grant last parag. 2nd line you=your
Ritter Page 7/33 2nd parag. last sentence take out and replace with but with
Ritter Page 8/33 4th parag. 6th line if I can do.....
Ritter 5th parag. last sentence lot of this is regulated
Ritter last parag. 9th line approve = approved, 7th line R/LC is on US 1
Last sentence that wet = they went
Ritter Page 9/33 1st parag. last sentence comp plan = Comp Plan change
Ritter 4th parag last sentence P & Z

MOTION: Ryan/Ritter to approve minutes of 09/25/13 as edited:

VOTE: All Ayes.

Reilly suggested doing "Public" before going on so no one has to wait.

PUBLIC:

Joseph Paladin, President Black Swan Consultant & representing Malmec. I think we've come a long way. I agree with everything we got so far. I thought meeting with City Council went well and I appreciate the representation that P&Z did there, you were right on point. I am satisfied the way it is heading. I really appreciate you all working with me and I intend to work with you all from the beginning to the very end, with architecture and construction, it is going to be a team effort. I will be here to work with you as much as you need me. Paladin thanks the Board.

E. PRESENTATION:

F. ACTION: NONE

G. DISCUSSION:

2. Code Requirements for Assisted Living Facilities

Exhibit: Agenda Report No. 2

Recommendation: Discussion

Reilly is discussing what was brought up at the presentation he made at the Council Meeting. It went very good. The two points that were brought up by Council that we need to discuss additionally to what we are going to discuss.

- 1.) The Lawyer asked us to look at Article I-9.2 Off Street Parking, which is a big issue in our Ordinance writing that we need to look at that Section. The homework is to read this, and come up with new suggestion for the new categories we have included, Community Residential Homes and Assisted Care Communities.
- 2.) Table 1-3.2 in the packet

Ritter said that Council asked if we were going to pick out certain Facilities under FS Chapter 400, because of all the different related health care facilities and pick the ones we might want to have here and just mentioned those.

Reilly is discussing what he handed out to Board tonight (10/9/13), Land Development ALF Additions, this replaces page 31, 32, 33 of tonight's packet.

Reilly is discussing Table 1.3-2 pages 27/33 of packet, what was asked by Council the Conditional Use (CU) under R/LC, all three categories should be in R/LC, to add "C" for levels 2 and 3 because they will have the acreage. If you go to Table 1.6 1(B) and look at acreage and if they have the acreage to do that in R/LC then they should be able to build it there. I think the reason why we did not want it there because R/LC is supposed to be Residential and Commercial. We accepted the 1 to 5 people but we did not want a lot of people, but if someone has a minimum of 5 acres in R/LC he is going to say I am allowed more than 16 people. We need to look at this. Reilly suggest to Board about thinking of adding "C" to all three levels and ALF too. Korn added it is going to crowd it a bit.

Korn asks about something that Bonnie brought up at the Council Meeting, a term that he had not heard until half way through the Council Meeting: "Sober Homes". Reilly said that is a separate

topic. Korn is explaining to Board that Bonnie went to a meeting and some other Towns had serious problems with these "Sober Homes" popping up in all the neighborhoods. Korn goes on to say perhaps it is something we should add. Korn says we can't regulate it, if it is not in the Ordinance. Ritter says it would not be allowed if it is not in the Ordinance, is that correct? Reilly says correct. Korn says that needs to be made very clear, apparently from what BW was saying some Towns had not anticipated and dealt with that, so it was open season. Ryan says the difference is whether it is a "half-way-house" or a rehabilitation type facility. Reilly suggests bringing up under "New Business". Ritter says a lot of them are under Health Care Facilities. Reilly asks what chapter would that be, Ritter responds it would be Chapter 400 on page 17/33, part 5. Korn says in the final verbiage of the Ordinance that needs to be very clear. Ritter adds we want to keep it rural and low density.

Reilly is discussing page 27/33, we are deleting under Nursing Homes: (including Rest Homes and Convalescent Homes) and replace with and Related Health Care Facilities.

Reilly says when you get to Mental Health and Substance Abuse refers to FS Chapter 397, but a lot of parts do that. Ritter suggests we put into the Code the ones we know we would accept, and don't even reference the rest. Grant adds if it is not in there it is not permitted.

Ritter explains that Council was saying we would be legally liable for not putting everything in there, but if we say it is to our rural character and keep to that guide line through all of these it should not be a problem.

Reilly going back over Table 1-3.2 page 27/33, under Community Residential Home change 1-6 persons to 1 to 6 and make all the same and under Assisted Care Communities for the Level 3's (16 or more persons).

Reilly explains that on page 87&88/160 in ALF work book he took the verbiage for Adult Family-Care Homes

Reilly discussing about the limits for Community Residential Homes and Adult Family-Care Homes, Ritter explains that there is different requirements for the Community Residential Homes and different services, one is run like a business and one is run like a family. Ritter explains they all have different levels, restrictions, and requirements between the 1 to 5 and 6 to 15. Reilly explains the definition of an Adult Family-Care Home is no more than 5. Liz explains they have 3 levels being:

- 1 to 5
- 5 to 15
- 16 or more

Ritter is explaining if it is only up to 5 you can have them in your home, if it is 6 or more it has to be a facility.

The Board is discussing level 3 in Adult Family-Care Homes. The Board is deleting "level 3" in Adult Family-Care Homes.

Reilly suggests reading about "levels" for homework to understand.

Grant suggests correcting tabulations on Table, and Ritter said to add Roman Numerals:

- I Assisted Living Facilities
- II Adult Family-Care Homes
- III Adult Day Care Centers

Ritter is explaining in the FS they refer to Part I, Part II, and Part III.

Reilly explains to staff whatever is done to Table 1-3.2, we need to do to Table 1-6.1(B) to keep consistence.

Ritter is discussing Table 1.6.1(B) under Community Residential Homes we need to add "levels". Also correct Adult Family Care Homes should be Adult Family-Care Homes. Ritter explains that we want what is exactly in the FS.

Reilly explains to the Board his update papers that he submitted tonight 10/9/2013; these replace the last 3 pages of your packet. Reilly explains that our final product is going to be an Ordinance. We have to have a Public Hearing then it goes to Council.

Reilly is explaining to the Board how he gathered his suggestions and definitions from FS for Article III. Ritter asked about the "Mental Health Facility" and Reilly discussed about deleting this. For Hospital we can use what is in our Code and the FS, go to page 22/33 #9 & #10 check to see if we need to update or leave alone. For Nursing Homes there are different "Parts", so we cannot use the one in our Code Book we need to update.

Reilly explains what he brought up at Council; he did not put anything under "Substance Abuse" because he did not think it was a good fit for our Town. The Board agreed on deleting Chapters 397.

The Board is discussing Article II Land Use and the order of the added materials. Reilly says that under Public Health is:

- Hospitals
- Nursing Homes and related Health Care Facilities

Then Social Welfare will follow. Ritter explains we should list them individually like FS and keep under same headings as the Tables.

Reilly discussing #8 is "Group Home" and we are going to change that to "Community Residential Homes", has "level 1 & 2", than #9 Assisted Care Communities that is all you need. Ritter said that when this is codified it would be put back in alphabetical order.

Ritter explains that you don't have to go in to too much detail because it will all come out in the Tables. Korn asks if the final recommendation to Council, will that include the charts? Reilly replies, yes.

Reilly is explaining to have the same format throughout, definitions, refer to chapters, and tell what the "levels" are. Here is statement that Mr. Paladin helped with, "In the RM4 & RM6 zoning districts an ALF factor of "3" will be used to determined the residents/bed density for ex:

RM4 is allowed 4 units per acre multiplied by 3 ALF Factor is = to 12 residents/beds per acre

RM6 is allowed 6 units per acre multiplied by 3 ALF Factor is = to 18 residents/beds per acre

Ritter asks if we should have asterisks on the Table for this ALF factor for only RM4 & RM6 to make it easier. Reilly explains the purpose of Table is for conditional uses. Ritter explains they can only do with the ALF. Reilly said we cannot use an asterisk, it has to be a number, the first asterisk is a 3 and the double asterisk is a 4.

Reilly now discussing Adult Family-Care Homes and add verbiage from page 88&89/160 ALF workbook #8, Chapter 419. Ritter explains that someone could stay in an Adult Family-Care Home if they don't have physical & mental limitations and they might be able to have more than 5. If they do then they become the Community Residential Home and they might have more restrictions.

Staff will get Check list for Adult Family-Care Homes and Community Residential Homes

The Board is discussing how often the individual homes will get inspected.

Reilly is discussing the Adult Day Care Center there are no levels, I included definition, and there are no overnight stays at a day care.

Paladin told Board he will send formulas on off street parking.

Reilly will send update pages he submitted in word. Reilly suggests including 8-9-10-11 with the headings. We will give to Lawyer and he will correct and put in Ordinance.

H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

Future Land Use Maps as a discussion and defining R/LC (Land Use Change) for

I. PUBLIC: (MOVED UP TO AFTER CONSENT AGENDA)

J. OLD BUSINESS/NEW BUSINESS:

"New Business"

Reilly states that Bud has presented us with something about the water. Ryan comments that it was something someone gave to him. The first page concerns an addendum to the actual agreement that was approved by Council reflects an understanding between Hann, City Manager from City of Palm Bay and Bonilyn Wilbanks, Town Administrator Town of Malabar. It clarifies certain aspects that they mutually agreed on. What comes after that is newspaper article and such related to whether someone has to sign up if water and sewer comes by, the general consensus is that "yes", if it is there they have to sign up. Grant adds that we are reading as if you have a property and a sewer line comes by your property by Florida Law you are required to hook up to it within 90 days or whatever at whatever price. Reilly says he disagrees with that. Grant says if it is a Florida Law, we need to figure out if it is true or not. Reilly adds that on the last page is, "the publicly owned or investor owned system that determines what the approval of Department of Health whether the mandatory hook up of the provisions of section #####, may be waived". Ritter suggests that they need to get with Palm Bay and put something in there and say they don't mandatorily have to hook up. Grant says that needs to happen because a lot of people are going to be affected, a lot of little people that this is going to be a burden for, Ryan adds especially ones with working wells and septic. Grant was talking about the two story on US 1 (Crowell Residence) south of me, that man had to go through a lot to get that septic tank, he spent a fortune to get it done and then tell him 5 or 6 years later sorry you have to hook up and spend more money.

Korn suggests do we want to send to Council something? Ritter says we should send some kind of recommendation to get an amendment. Korn adds that they direct the TA to negotiate with Palm Bay to waive that requirement on Malabar residents. Ritter adds to waive mandatory hook up provision. Korn suggests directing our recommendation to the Council; it is our job to advise Council. Ritter is reading that the Florida Statutes may be waived but it can only be done by the publicly owned or investor owned system and they have all the rights to water/sewer.

Ryan is explaining that he hopes everybody understands that the way the agreement was signed & in effect Malabar has lost all sovereignty when it comes to water, where water goes and how it goes especially along US 1, if water comes down water/sewer it is an open invitation for high risers and everything else. Ryan adds his personal opinion; I don't see how Paladin gets his pay back on his \$2.5 million dollars. Ritter adds unless someone makes everyone hook up along US1.

Ryan goes on to say the way the agreement is situated and specified the people have no choice. Ritter says they don't have to hook up unless required by the state. Grant says if it is there, it is required to hook up.

Korn says if we are concerned about this, it is our job to ask Council to go back to (City Of Palm Bay) and it needs to be taken care of before the site plan is approved for Paladin project. We are well within our responsibility and rights to protect the people of Malabar. Reilly would like a motion from the Board.

Motion Ryan/Ritter: Recommendation to Council that they modify the agreement with Palm Bay regarding the water/sewer on any and all future expansion into the Town of Malabar to waive the mandatory hookup provisions of Florida Statutes Section 381.00655 Vote: Aye (Ryan, Ritter, Ball, Reilly)

Reilly opens for discussion that the Council asks where did this all come from, in a discussion we are referencing our agreement, and Reilly asked Bud why he is bringing this up? Ryan responds it is in the agreement that is attached to this supplemental agreement that someone sent me. Reilly says it is referencing the Agreement between Malabar and Palm Bay. Korn adds that in our discussions concerning the ALF project that is going south of Malabar on US 1, we have repeatedly said that water/sewer agreement must be in place and a reality before any construction can be started, in making that requirement on the ALF proposal we have put some of our citizens at risk having to buy what they don't want.

In discussion the Board is referencing the signed Agreement that the Town has with Palm Bay in reference to the water/sewer utilities. In Section 12 Other Agreements the PZ Board feels that paragraph (4) does not cover our residents and it needs to be revised, by waiving the requirement of residents to hook up.

The Board is discussing the hand out given by Ryan, #4 doesn't protect the Malabar residents, and Ritter suggests it needs to clarify that they (City of Palm Bay) need to waive their mandatory hookup. Grant adds this is a rural community; we don't necessarily have water and sewer. Korn wants the Chairman of Council to get copy of recommendation as a courtesy.

K. ADJOURN

There being no further business to discuss, **MOTION: Ryan/Grant to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 9:40P.M.

BY:

Patrick T. Reilly
Pat Reilly, Chair

Denine Sherear

Denine Sherear, P&Z Board Secretary

10/23/2013

Date Approved: as corrected