

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
FEBRUARY 12, 2014 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, excused
	DON KRIEGER
	GRANT BALL
ALTERNATE:	GEORGE FOSTER
ALTERNATE:	
BOARD SECRETARY:	DENINE SHEREAR

Denine stated that Clerk Franklin was also present.

C. ADDITIONS/DELETIONS/CHANGES: C

D. CONSENT AGENDA:

1. Approval of Minutes Planning and Zoning Meeting – 1/8/14

MOTION: Liz / Don to approve minutes of 1/8/2014 as corrected:

Ritter corrections:

Page 3/58 under "C." second line ... have to attend to. Please remove...

Page 4/58 5th parag. down 3rd line a ",", after septic tanks

Page 4/58 3rd parag from bottom a ",", after Lutz

Page 5/58 under "Reilly's recommends" first bullet has should be as

Page 6/58 3rd parag the last sentence Ritter goes on to explain Palm Bay has to request the

Page 6/58 4th parag Wayne Abare was saying that the only...

Page 6/58 5th parag 3rd line take out not at beginning of line

Page 6/58 5th parag last line... which Palm Bay has to request to waive the right to mandatory...

Page 8/58 under "Public" 4th line ...will have to be before 5th line ...we are not City if of

Grant corrections:

Page 4/58 to change all the "Vaheeds" to Teimouri keep consistence throughout minutes

Page 4/58 7th parag., 2nd sentence "weather" change to whether

Page 4/58 3rd parag up from bottom "lightening" change to lighting

Page 5/58 2nd parag 2nd line A-Morris "comment" commented that is-it

Page 5/58 5th parag starts with "Foster" has should be have last sentence in that parag

requirement should be requirements has should be have

Page 7/58 2nd parag 7th line ... to be roads, and-drainage, planning, and.... 9th line your should be

you

Page 7/58 2nd parag from bottom 1st line statues should be statutes

Krieger corrections:

Page 7/58 3rd parag from the bottom 2nd line ... to an outside force, which is... 3rd line The Town

Towns people

VOTE: All Ayes.

Chair stated that Alternate George Foster will be voting in place of Bud who is excused.

E. PUBLIC HEARING:

2. Land Use Amendment & Zoning Change for (3) Parcels: one (1) at 6855 Babcock Street and two (2) vacant parcels ID 29-37-10-299 & 278: "OI" (Office Institutional) to "CG" (Commercial General): Applicants, Mr. Salvatore Tabone, Mr. Anthony Tabone & Elisha Duncan (Community Gospel Truth Church of God, Inc)

Exhibit: Agenda Report No. 2

Recommendation: Action to Council

Chair reminded Board that this is a QJ hearing. All ex-parte communications and any site visits need to be disclosed with date and time and who they talked to or when they visited site. Don went by there today; did not talk to anyone. No other disclosures.

Chair called petitioner, Anthony Tabone, representing the owner (his dad Salvadore) of the parcels 278 and 299.

Tabone stated that the front piece is owned by Elisha Duncan for the Community Gospel Truth Church of God, Inc. and he has a deal to buy it if he can get the land use and zoning changed. Under the current zoning OI is still commercial. His dad bought parcels 278 and 299 seven years ago for investment. There has been zero interest in it with this zoning. He is asking for change to open it up to more general commercial development opportunities. He knows residents don't want a lot of traffic on Booth Road. He will make sure there will be responsible development so as to not adversely impact the residential area. He is proposing with the front parcel to have access directly from Babcock Street.

BM Don asked who owns what parcel. Denine said pg 12/58 of package shows the three parcels and who owns what. Much discussion by Don and staff. The front parcel 6855 Babcock St is owned by church; the parcels 299 and 278 are owned by Tabone.

BM George asked about plans to develop. What kind of development does he propose? Tabone is working with real estate professional in Orlando to try to come up with a plan for development. They are in tough situation and can't compete with Palm Bay. Tabone said that he understands that Palm Bay is allowing property owners with agricultural land along Babcock Street to change it to commercial. There is a piece across the street that sold for 90K because it is zoned commercial. BM Don asked if he was going to market it with real estate professional. Yes. BM Don asked if the professional said they should request the zoning change. Yes. BM Don asked if he has tried to sell it with this professional with existing zoning. No.

Chair opened Public Hearing:

David Scardino, former planner and licensed contractor and builder. He wants to ask applicant what happened to oak tree that was taken down. Where is it? Scardino said applicant tore tree down. Scardino said at present time he has trouble getting in and out of Booth onto Babcock. He moved there for the country feeling. He has also been in law enforcement. He asked if property is changed to CG what could go in there - a bar, lounge, adult entertainment, enclosed commercial arcade. Don said yes. Scardino said a church would be a better use. He is deadily opposed to this request. It is hard to get in and out of there now. BM Don asked about his address. Chair said address is on submitted speakers card. Scardino asked what about the wetlands. What is the plan for that?

Petitioner Tabone responded. They did get a clearing permit from Town and no mention was made of the oak tree until it came down and they paid a fine so a replacement tree could be replaced somewhere else in Town.

Pastor Duncan, representing the parcel fronting Babcock Street said he stood in front of this Board seven years ago and asked for a church and they did not want a church there. There were a couple of different people on the Board then. So he built in W. Melb. BM Don asked when he asked for a church there. Seven years ago. Duncan appreciates them not wanting a bar or strip joint. Regarding the clearing that was done back then, they did corrective action and did mitigation and have made it better than it was before.

Ken Shafer, sympathetic with plight of church – thought it was for CG zoning. The Town Code is very clear on what can be adjacent to residential. Thinks they were sold a wetland by previous owner. Not sympathetic with Tabone. He said his wife watched Tabone cut down the 200 year old oak tree. Schafer said he knows you can't put commercial development next to residential in Malabar.

Tabone responded and said the property is already a commercial zoning as OI. It is not agricultural or residential and the zoning to the north is already CG.

Dominic Foti Jr, 3080 Lett Lane, spoke about traffic problems coming out of Booth onto Babcock. It is bad at times now and if there is another entrance at that property then that will add to the problems they have in their ability to get out onto Babcock Street.

Charles Smutko, 3085 Lett Lane, he wasn't here at meeting seven years ago because he was protecting all of us overseas. He apologizes for earlier outburst. He suffered a head injury serving in military. Having a church in the community is a positive thing but they already have one. Are they going to provide assistance to veterans. What they have in their community is country. They have owls that stand as high as the table. Any further development may cause them to relocate. They have already have some cranes move and one was killed on Babcock. The cranes were here for five years. The impact to these species – their community is the last place for them to live in this area. If you develop up to Callagy Tires there will be no place for these species to survive.

Smutko then said this area has wells and he wanted to address this issue when the BP gas station was put in. He wanted to take water samples – before BP and then 10 years later. He can't drive and wasn't able to do this. Now someone wants to develop the property the applicant wants rezoned. Now he has to do all the impact studies because the Town won't. Mr. Smutko will pursue these tests if they allow this area to be developed. Smutko then said the stormwater drainage flows from the south (county) to the north into their community. He doesn't understand that. What is going to happen when you allow this acreage to be developed. He has seen sheets of water from Palm Bay come across Babcock Street into Malabar. He has brought this up in other forums. Palm Bay is the power in this area. Already have a traffic problem. What is the plan to improve the current traffic problems; not the proposed.

BM Don said he is against the request to change the land use and zoning.

Smutko said it is a community issue. All their neighbors came here tonight. All their children grew up in that area. To have that piece of property developed responsibly is misstatement. it is outrageous the way it was cleared before P&Z was notified. Go back into your notes. That is what these irresponsible persons did. That 200 year old oak tree was taken down by these people. But they say they are responsible. The residents in this community want to be able to have a bar-b-

que without being disturbed by traffic. Applicant is from Altamonte Springs and he should have done research on this area before he invested in this property.

Tabone said the amount of square footage is the same with OI and CG. No one is going to pull a fast one. As to the tree no one said the oak could not be removed. He did not know how important the tree was to the community or he would have left it. Babcock Street is a commercial corridor and has high traffic. It is zoned for building. He loves mother nature as much as them, but a neighbor could move in with a kid and a electric guitar and scare off the birds. They need to be able to develop it.

BM Grant asked him to confirm - he is not proposing to develop it; he is proposing to change the zoning to sell it. Tabone said that he may be interested in developing it – it would still come thru P&Z. Nothing is going to be done overnight. It is not viable under the current zoning. He is asking for the zoning change to open it up to interest other tenants.

BM Don asked if he was going to join the properties. Tabone said he doesn't have anyone yet interested and so can't answer how it would be sectioned.

BM Pat explained to Board that all the property to the north is CG and CL. Much discussion about wetlands in area.

Scardino said they were not opposed to church. He then said that the applicants buried the material when they cleared those lots and they are not buildable.

Diane Scardino 3105 Lett Lane, the way she sees it they want to do something that is not allowed. She has horses and would love to board other horses but she knows she can't because that is a commercial operation. Her concern is if it is changed to CG they could build something and be open until midnight.

Fitz Gerald Lawrence – said the part that is CL has been bought by State FDOT for stormwater ponds for the I-95 expansion. This has happened within the last two years.

Mrs. Scardino said that a part of those parcels are wetlands. She addressed the applicant – she did not believe he had pulled a permit to clear the parcels.

Pastor Duncan, in response to some of the things that were said. When they came seven years ago and asked for a church it wasn't approved. It was made clear to him that a church was not wanted there. Churches have very low transportation impact and are mostly used twice a week. The zoning of OI is perfect for a church. He said P&Z said they did not want a church there. As to the wetlands, there is always mitigation – that is part of the process. They realize that dealing with all outside agencies is part of the process.

After hearing the lack of support for the church, the church decided to sell it since they can't eat it. They bought and built their church in W Melbourne. Pastor agreed that they were sold the piece of property without benefit of knowledge of the wetlands. He understands that part of the process is to comply with St. Johns for the wetland area within the road right-of-way. DEP would have jurisdiction on the RR-65 zoned area. Pastor said it is not anything they are trying to skirt around.

Pastor said they want to sell the piece of property because it is obvious the community does not want the parcels developed.

Chair closed PH and brought back to Board.

Chair asked for a motion to approve.

MOTION: Don / Liz to approve the land use and zoning change for the three parcels indicated on the application.

Discussion: BM Don doesn't have much to say. Wetlands don't bother him. The precept of the OI being a buffer. Wants to know if they (the residents) know they have been working on changing all the land use.

BM George is an alternate. They have heard the stories from the owner of the first property and the representative of the back two. They are here to change the zoning to make it better to sell. It is his thought that he is to listen to the residents. The residents have a completely different story. If the owner of the church was here with the plans he would be very inclined to listen. The residents story needs to be told. The prior stewardship has been substandard. Good case has not been made. If the only reason for the request is to drive the price higher he is opposed.

BM Grant said he sees this area as a buffer zone. If they have plans to build that is one thing. But not to just change the zoning to make it more palatable to sell. If they get the person and bring in the plan that would be better. Doesn't want to support a higher intensity zoning,

Applicant stated that the site plan review is a separate process and part of that is to allow resident's to comment.

BM Liz would not recommend changing OI to CG. There is a difference in OI to CG. You may have good intentions, but once it is sold it is sold and it could be anything. It is not fair to residents in the area.

BM Pat pointed out drawing on overhead. The "x" indicate where there are residences. BM Pat said it is valuable piece of real estate. It is zoned commercial use although it is not as intense.

BM Don said activities allowed in CG are adult entertainment, hotels, motels, marine activities, restaurant drive-ins, service stations, with gas sales, vehicular sales and services. Those are the additional differences between OI.

BM Pat said this would be allowable because it is adjacent to existing CG to the north so it would not be spot zoning. No more comments. Chair called for a rollcall vote.

Rollcall Vote: Krieger, Nay; Foster, Nay; Reilly, Nay; Ball, Nay; Ritter, Nay. Motion failed 5-0.

F. **ACTION: none**

G. **DISCUSSION:**

3. Future Land Use Maps and Defining R/LC

Exhibit: Agenda Report No. 3
Recommendation: Discussion

Discussion:
 Juliana Hirsh 1035 Malabar Road, Malabar FL you have been playing for 5 years, start all over again I feel that so many Board Members have too many personal opinions and I am serious about it. It is an illusion to have all doctors building and offices, for OI. When I bought my property, it was almost \$200, 000, it was commercially zoned then it was changed to RR-65. I did not look in the books in, since 1982 not one house has been built on Malabar Road, someone on these Boards needs to wake up. In 1986 I came into the town to put a studio on my property. I am here to

complain before you, we are all here about the Town. I want someone to take it serious. In the olden days the people built offices. I have thought about suing the Town about not allowing my studio years ago, and not getting revenue. Keep in mind what is really going on.

Reilly asks the Board if they want to go forward with zoning changes on corridors.

The response from the Board is that there needs to be a better definition for R/LC; the Land Use is Commercial and includes Commercial General (CG) & Office Institutional (OI)

Ritter comments that the Proposed Land Use is a guide, the R/LC is considered Commercial and should always have a residential component, R/LC is like OI.

Reilly requested to include Article II in next packet and the latest definition for R/LC and what was approved by Council.

Kreiger said we just need to get definitions straightened out. Could Commercial Limited (CL) be the Land Use for R/LC. Reilly responds that we are not changing the Table in Article II. Reilly said it is state law that zoning and land use has to be compatible.

Kreiger said that before 1980 RR-65 was RA, and there was a professional zoning. We want to align with those zonings. We are making this Town into a City.

Reilly requests for next meeting and homework:

- Article II Table
- Article III on R/LC
- Definitions of R/LC

Board should read Article II & III about R/LC to understand what it means and get familiar with the tables.

Grant asks if someone buys property in a higher zoning, shouldn't you be able to use as commercial property.

Foster commented that it is his general thought that specific zoning is a higher thought process as the property owner desires to upgrade those zoning requirements and the common appraisal view is that we have those three arterial zonings. It is my understanding of the Town and others that the homeowner should upgrade the zoning. It is only natural to predict there is going to be commercial activity.

Reilly explaining to Foster about the present and future zoning on the overhead maps dated 7/17/13.

Ritter said if someone comes in to change their zoning on their property it is heard.

Krieger said that the land use changing means the taxes go up. Reilly told him to prove it bring something in to show us that the taxes go up

H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

Follow up on Feasibility Study on Foundation Park Triangle

Sherear said that the "Foundation Park Triangle" off Babcock Street will be coming before this Board for presentation again in the Future

I. PUBLIC:

J. OLD BUSINESS/NEW BUSINESS:

Krieger asks about the storm water and what income does that bring in to Malabar? Sherear will research.

Ritter asked about the water issue agreement with (City of Palm Bay) that was discussed at the RTCM Feb 3, 2014. Reilly replied that he was in attendance.

P&Z Board wants to make sure that all the property owners along Highway US 1 are aware of water/sewer that will be going down(not just in a 500 foot radius).

K. ADJOURN

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

Vote: All Ayes. The meeting adjourned at 9:54P.M.

BY: Pat Reilly
Pat Reilly, Chair

Denine Sherear
Denine Sherear, P&Z Board Secretary

2/26/14
Date Approved: