

**MALABAR PLANNING AND ZONING BOARD
REGULAR MEETING
FEBRUARY 26, 2014 7:30 PM**

This meeting of the Malabar Planning and Zoning Board 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:	VACANT
BOARD SECRETARY:	DENINE SHEREAR

ADDITIONAL ATTENDEES:

TOWN ENGINEER: MORRIS SMITH

C. ADDITIONS/DELETIONS/CHANGES:

Chair Reilly stated that George Foster will be voting in place of Bud Ryan who is excused. Chair Reilly explained to the Board that they will be using the "Revised Agenda" that is in front of them. There is an "Action Item" that has come before us that we need to address immediately. All in Favor, Vote: All Ayes

D. CONSENT AGENDA:

- | | |
|-------------------------------|--|
| 1. Approval of Minutes | Planning and Zoning Meeting – 02/12/2014 |
| Exhibit: | Agenda Report No. 1 |
| Recommendation: | Motion to Approve |

Motion: Foster / Ball to approve minutes of 2/12/2014 as corrected

Ball corrections:

Page 2/47 draft minutes of February 12, not the 26

Page 6/47 3rd parag from bottom the end of first line "since they can't eat it."

Page 7/47 2nd parag 1st line after Don take out the d before doesn't

Page 7/47 3rd parag 5th line residents should be resident's

Page 7/47 4th parag 1st line at the end " But not to just change...."

Page 8/47 5th parag from bottom 1st line "maps date dated"

Ritter corrections:

Page 8/47 4th parag 1st line us should be is

Krieger corrections:

Page 7/47 2nd para, 2nd line clarify "Wants to know if they (the audience) know"

Page 8/47 7th parag RR A should be RA

Page 8/47 10th parag take out 1st sentence

VOTE: All Ayes.

E. PRESENTATION:**2. Follow up on Feasibility Study on Foundation Park Triangle (2009)–Booth Rd /Babcock St / I-95 by Morris Smith, Engineer and Mr. Donald Barker****Exhibit:** Agenda Report No. 2**Recommendation:** Action to Council

Morris Smith, President of Morris Smith Engineering, LLC also the Town Engineer gave history on this project, one of the first projects with Debby Franklin here at the Town was how to do a physical graphics and model the intersection of Foundation Blvd and Babcock Street, where the Knights of Columbus building is located, Foundation Blvd runs from west to east. Right now it dead ends into a "T". We were looking as to how this could be expanded into what we refer to as the "triangle area". Morris explains that Debby and he did some research on the property. Morris explains that he began to see it as an opportunity for the Town to increase the property values which in turn increases income revenue for the Town. This started the conversation as a commercial "subdivision", and then I meet Don Barker and David Miller who are property owners in this area. Morris and Debby began to go through the Town records; Morris saw that a lot of the parcels were being sold to the DOT (Department of Transportation) for the purpose of the widening. I wrote a memo to the DOT in Deland and got back a 3 ring binder of all the meetings that requested staff (Malabar) to go to and no one from the Town attended. The "fall back" is to talk to the owners to see what's going on, would they consider putting together a group and establishing a commercial condominium company. Morris goes on to explain the way it was proposed was that 90% of properties were wetlands and have considerably less value then the people that own purely upland property with a small sliver of wetlands, and/or Town ROW that could be vacated to increase the property ownership. As we worked through the process there were 3 meetings held by invitation to all the land owners and there was a consensus that everyone liked the idea. Morris explains that by the time he got back around to dealing with DOT and asked why they bought all the "uplands" the response was they did not want to deal with the St. John's. The thought process that we had was if you only own uplands and we own only own wetlands and if joined together the wetlands become part of the overall storm water plan. As I presented it, Don Barker talked closer to land owners. Morris explains that over time the parcels would have a greater value for an overall development. This was back in 2010.

Reilly asked if the people are together in a group now. Morris responds that it is still the same people that are going to do what they want on their property, but are realizing that if they put their parcels together it will increase their property value.

Morris explained that geographically it is an ideal location great for some industrial sized (ie. UPS, Fed EX) quick access to I-95, it is 3 hours from Miami & Tampa. The owners of those properties are open to moving forward.

Ritter asked about some of properties, are they already sold to DOT. Morris explained that they have already dug ponds on them. Morris explained on the north end of the "triangle" there is already a pond dug about 3 years ago. Ritter asked how does this impact the project proposed. Morris responded that it is just areas that we cannot utilize for the "uplands" ownership as part of the project.

Reilly asked what is the next step, Morris responded to begin looking at a "legal document" to make all this happen as a "commercial condominium" and what will it take, and how do we get through the possible abandonment of the ROW, so the owners can take ownership to the centerlines of the roads, then how are we going to restructure the area as all private property or new dedicated public streets. Morris explained the next steps are more legal then engineering.

Reilly asked if the plan is the same for Foundation Park are there the two doubled lanes going in.

Foster asked what would you like us to do. Morris responded that tonight is just an informal presentation and things are still moving ahead.

Krieger asked how does the Town not know they are building ponds? Smith said he is not sure how the State gets around this. Why has there not been permits pulled for the ponds, it is within the Town of Malabar. Krieger asked staff if permits have been pulled in the Town for the pond and Sherear responded that no permits have been pulled. Ritter asked if we can find out why not?

Mike Callagy, owner of Callagy Tire Babcock Street. The day the equipment started moving behind my property digging that retention pond I called the Town of Malabar to let them know what was going on. I have supported Don Barker and his ideas from day one, because if we have industrial the commercial property is not being used in the Town and the Town is missing the tax base for this whole area, there are no homeowners. He said he called the Town to ask if they knew the ponds were being dug and someone told him they did not know. The Town was blindsided on this, and unfortunately a lot of people were affected. This doesn't affect me personally, my dad bought 5 ½ acres off Babcock Street. I support the growth of Malabar. My dad was the mayor here for many years. I am disappointed that the Town did not attend the meetings with DOT. This is tax basis, the Town of Malabar needs to recognize this area for industrial-commercial area, it is by I-95, a hub, and it has potential. Ball asked when the State buys a piece of land does it come off the tax base and Morris responded yes.

Foster asked Mr. Morris Smith if there is an individual that is driving this project, contacting the owners and pushing for a group type project. Morris responded that it is property owners Don Barker & David Miller offering communicating with the property owners. Foster asked what stage is this in; are all the property owners in agreement. Don Barker responded that I own about 5 acres, the way this all start I had spoken to Debby Franklin and found out a feasibility study was done and came back successful (note: it was completed but showed there would be wetland issues.) The majority of the people that were contacted gave positive feedback. This is well over due we are just trying to help Malabar's Tax base. It is far on the west side of Town, and the Palm Bay Parkway is going to come in one day, even though you don't hear about it. It is going to line Babcock Street with a lot of business. We need to get something going, it is perfect timing. Morris explained the groups that do land developing that would be a commercial condominium or a commercial industrial site; they are much more excited about approaching a project after all the "heavy lifting" has been done. If we can get all the owners together and set up some type of "LLC" or "corporation", here is all the acres and here is all they are worth. Morris explained it would be equal shares. I think the Town of Malabar can really benefit from this type of tax base that an industrial type of park would generate and make it the most pleasing and marketable. Sherear added that letters were sent out to property owners in the past and we received a lot of positive responses.

Don Barker explained that the feasibility study was successful and we needed to touch base with the P&Z Board. It seems that everyone wants it; we need to go through the legal part of it now to push it forward.

Ritter commented that it is the perfect place for it; there is water, sewer, lights, and roads. Ball asked if this goes through who would build the roads. Morris responded it would probably be part of a private road-way system inside that commercial park. Ball asked if the road is put in the Town and the Town accepts it then it would have to maintain it. Morris explained that if it is a "PUD" you can set it up in any format you would like and any desire to the Town.

Morris explained that if it were to go to Council it would have an exhibit showing the greatest and best use that is seen for the particular property.

F. ACTION:**2.5. Minor Modification to Malabar Local Market North & East Elevations****Exhibit:** Agenda Report No. 2.5**Recommendation:** Request Approval

Chair Reilly is explained to the Board that the site plan was already approved. It is coming before this Board just for the front view and the back view modification. Then it will go to the Chair of Council for a signatory approval. Reilly told the Board it is just appearance. It has met the town's staff approval. The Board discussed the two pictures in front of them. Ritter said it looks nicer than the original one.

MOTION: Ritter / Krieger to recommend Council approval of the Minor Modification for the Malabar Local Market

Discussion: Krieger asked why it came back to Board to make a decision without mulling it over.

Sherear explained that Mr. & Mrs. Chen had been coming to Town after the original approval of site plan to make minor modifications, the problem was that it was not clarified to them about the "vernacular" requirements, so they have gone back and forth since May 2013, December and again in January 2014. They had different plans drawn; finally they asked to speak to staff, so they spoke to me along with Bonnie and Debby asking to clarify the "vernacular". Also, we received calls from Bob Carter (The Plan Place) who drew up the plans, he was aware of the vernacular. This has been going back and forth, and the Chen's are ready to build and submit plans.

Sherear explained that Roger, the Building Official had no adverse comments concerning this modification which was submitted February 10, 2014. Morris explained that vernacular covers pastel colors, unless it is brick. Foster has no problem with the changes. Ritter said the new east plan is much nicer than the old one.

VOTE: All Ayes 5-0

G. DISCUSSION:**3. Future Land Use Maps and Defining R/LC****Exhibit:** Agenda Report No. 3**Recommendation:** Discussion

Chair Reilly discussed with the Board page 25/47 "R/LC" definition is presently what is in our code. Reilly questioned about what P&Z gave to Council to implement in the Code was never done. Sherear said the packet that I got from Debby is what went to Council. Reilly asked about the 6 to 4 density. Sherear explained to review page 32/47 a memo that explained that Council did not reduce the density; they kept it at 6.

Krieger asked about information on page 34/47 if it was on the web site. He could not find it on the web site. Sherear explained that on page 36/47 are names & addresses that letters were sent out to. Krieger added that getting back to the "newsletter" is a way to let people know that things are changing.

Grant said that we are going down a road away from a rural community, if we want to stay a rural community. I understand that but by allowing city sewer/water to go down US 1 we are not staying a rural community. Krieger has hand out for Board about Land Use & Zoning. (copy to Board Secretary)

Krieger explained that it comes down to theory, R/LC when Carl was in here explaining when this all originally happened because people were living in houses and the zoning was getting changed to commercial and they were afraid if they changed it to commercial and a person's house burned down that they would not be able to rebuild because the zoning does not allow that use.

anymore and the house is not there anymore. So they created this zoning that was a between residential and commercial so that the people could rebuild and live there. There is no other place in the state that have "R/LC" they call it "mixed use". When you look at "mixed use" in our old paperwork it comes back to land use. There is "future "land use, which is future land use and then there is land use and that is your land use for today. Then there is zoning which a subsidiary of this. I kept saying for the last couple of years that I don't want to change people's zoning without their permission. Krieger said that zoning does not have to agree with future land use. If we change the future land (FLUM) use we do not have to change the zoning in the Town.

Questions about R/LC: Is it residential or commercial and the answer we get back from staff is that it is commercial. (note: see Article II and III of LDC) Looking at "mixed use" you can have different variables. Krieger said that we are trying to solve a non-problem right now; right now people can walk in and we have a basic chart to go by and it is not spot zoning because we already have a plan.

Krieger pointed out: Do you want to have a huge piece of paperwork that no one in this town will understand to be presented to Council and have two meetings, one discussion and one vote and suddenly you can't have chickens on your property anymore. I want to see more of residential, why have we lost the term "rural" in this town. Krieger said that all the work we have done is correct, we are doing the right thing. Ritter added that she never liked R/LC it is residential / limited commercial and it is considered commercial. We need to do something with different designations under the same land use.

Krieger said in the paper work tonight, explaining R/LC it refers to limited commercial uses, where as we don't have any description, we have commercial limited use. Krieger explained to Board that we can't be in rush to have results.

Reilly said that we have to go back to the intent, like Bob Wilbur said was that people wanted to be able to live on the property upstairs and have a little shop down below. That was the intent 20 years ago.

Krieger said that our future FLUM is not our current LUM and it is not zoning, Reilly said it is land use. Krieger said you got 3 things: 1)Future; 2)Current; 3)Zoning

Reilly explained that we are required to do the FLUM maps. Krieger said we do not have to do this, there is no DCA anymore. Reilly said we are required to do the FLUM. Reilly explains the last time we paid to do the Comp Plan we were required to do the FLUM.

Krieger said we have sovereignty again and we control our future the reason RM6 is in this town to begin with is because DCA said you have to have so much "high density", which is a direct violation to our charter. Maybe scrap the whole thing and look back to "mixed use". Ball added it is going to change things if water and sewer go down US 1 and the "future use" of the property. We have the density small because we are living on septic and well. As soon as you change that we are no longer the "Town of Malabar" we are the "City of Malabar".

Reilly brings out a point that we are not changing much, looking at FLUM that P&Z has been working on, it shows that R/LC is identical along US 1. So we still have the same issue whether water comes up or down, we have not changed what R/LC is. Where it changes is in Article III, Table 1-3.2 the last column is with water and without water that is what is going to change is how intense you can use your property. The point is that R/LC has not changed it is still the same. We did not change anything along US1.

Krieger said that "present land use" is actually in our Comp Plan. That is "future land use" it is not current and we are changing it, Ritter explains the "proposed land use" didn't change from the current future.

Krieger said now they (staff) want to align zoning too. Ritter said they can't we already told them. Krieger said the paperwork and memos we have been told that is how it is going to be done. Krieger said when he reviewed paper work from the state that is not the fact. I don't want people to miss two meetings and now you have higher taxes on your land and its best use is this future that we have decided for you.

Foster asked if a grandfather clause would cover what they are doing now on their property. Reilly thinks it is not a legal term.

The Board is discussing the FLUM that is up on over head.

Krieger asked why we are going through all this and it seems to be a mad rush and it has taken years and I think it is wonderful because now we get to look at it again. The R/LC can be anywhere in the Town. Reilly said it can only be on Babcock Street, Malabar Road, or US 1. If you read the Code-Comp Plan that is what it says. Reilly said the Comp Plan 2010 was implemented. Krieger looked at page 41/47, Ritter said we don't have any R/LC on Babcock Street; it is only Malabar Road and US 1. Reilly explained the "proposed land use" process it is what we (the Board) think the town should be, it goes to Council and they approve it, then that is our present future land use.

Reilly explained that in our Comp Plan we have a future land use map (FLUM) that we use today pointing at map on wall that is our present land use (note: that is zoning map). The land use is equal with the zoning. Reilly said if you go to Article II that is where you will see your zonings and land use comparisons.

Ritter said when we update the FLUM; does that take the future and make it present? Reilly explained that our "proposed land use" is the future land use; we are modifying the future land use, not the present.

Reilly said that in 2015, (did not know that DCA went away) (note: it is now the DEO Dept of Economic Opportunity) we would have to do the comp plan review again (every 5 years) and show the "proposed land use maps" that was our goal, with Councils approval. We still have our three (future, current, and zoning).

Krieger said it is not in the comp land use, it only has future and current land use, zoning is different it does not have to agree it can be part of a subset of a land use, land use can have several. Ritter said if it is future and has not been changed yet, why would you have to change it. Krieger said for that a lot of people for simplicity would like for land use & zoning to be the same. Ritter adds that zoning defines permitted uses of land and characteristic of building height. Reilly said we have that in our Land Development Code and in our Comp Plan.

Reilly talked to the Board, he would like to investigate what we did before, do you want to scrap it and start over. Ritter suggested reading what Krieger handed out at this meeting, and get a handle on all this.

Public:

Juliana Hirsh 1035 Malabar Road, I agree with Don & Liz the R/LC is so outdated because it was originally for US 1, 30 or 40 years ago they had their businesses and houses. Do you see 40 mom & pop operations coming on Malabar Road? Ritter replies that there are some people that still want

waking up in the morning saying my property is now commercial. I woke up in the middle of the night and my property was from commercial to rural residential without a notice or anything. I think they should put it all commercial 400' back like it was and the people that don't want it should be exempt, so they don't have to pay taxes, in other words reverse this thing. It makes no sense. In 40 years since they rezoned it, not 1 house was built on Malabar Road. I suggest that there should be some kind of commercial zoning with a variation allowed; I don't want to pay for it. My zoning was taken away from me. We did not rezone it yet, because of the taxes. I did come in 1986 to build a studio and was denied. When people come in to rezoning, the wetlands have nothing to do with this Board; the "water God" will take care of the wetlands, the water management. My suggestion to make it shorter "mixed use" sounds better you can do other things and put in what is not allowed like industrial and high commercial.

Krieger discussed about the "RR" they all have different densities, maybe you should have "mixed use" and different densities, we tried to do that with the 6 units. If you have 50 or 60 acres you should be able to have "mixed use".

Krieger said that there is not much that I have seen here that anyone that has come forward with any reasonable project that has not been able to do. Juliana responds that "that is not true". Krieger discussed when you change the zoning that everyone's taxes are going to go up; I was tasked with the project if this is going to happen. Do we have to be an ultra expensive tax base?

Foster asked Chairman Reilly a question, can you tell me what the history is when someone has come with a plan and wanted to build, has the Town accepted or has it been a blanket of denial.

Reilly responds that very few people get denied, it has been density, not the right place, people come in for "conditional uses", and it has to be compatible with the neighborhood. The putting up of a gas station on Weber Rd & Malabar Rd, it was RR-65 and they wanted to re-zone it and it was denied. You have to have buffers between residents and high use commercial. It is very rare that someone gets denied unless we have very good cause. Reilly said that people have the right to use their land. Foster said that it seemed to him that commercial developers go where there is a lot of present commercial development where there is a lot of traffic, the Town is just not there we are slow to develop. Reilly comments that city sewer and water is another driving factor.

Ball said that one thing that you will notice, if you want a commercial business you want to be where the people are, US 1 is not where the people are, it is west of town there is nothing to the east of US 1 but the river. To build a business on US 1, you don't have the traffic, it is not a good commercial area it is not as desirable as Babcock Street, even moving further west there is a population density to the west. Malabar in general is pushed to the east side of the population density so to me our Charter makes a lot of sense, "rural residential" we keep it rural.

Ritter added that there is not enough population here to support a business unless they are specifically coming to a destination. The area doesn't support a business along US 1. The established businesses have a population and a following.

Krieger said that our maps are a good guide. There is no waste in the work we have done.

Juliana commented that if go from Babcock up Malabar Road up to our Malabar sign, it is densely populated. It is because for years and years we have such a name all over, that nobody wants to build here. Ritter replied that is because we are rural, the density is less. The water and sewer also stop there by the Palm Bay Hospital.

Krieger asked the Board; as entities do we (the Town of Malabar) want to stay rural.

Foster said you have two different factors going on Malabar Road is going to be widened I think that there will be more commercial interest; commercial interest is a very expensive process. You want to recover your money and make a profit. As far as the people that are business minded they have not expressed an interest to put their money there. The people that are residential see it as a major arterial corridor so that limits the interest as far as the interior lots and the homeowners are excited to build their dream home as far as the business people were the activity is that is where you see them with an interest we just don't have at this point a reason for people to put that kind of money in Malabar.

Krieger said that he much preferred a business moving into Town where the people are going to live here. There is a significant difference between a person who has their business in this town and lives in this town, and that is probably one of the best reasons to keep this R/LC going. The home occupation license another thing that is very rare in other places.

Reilly said that if we look at other towns for "mixed use", this means the same as R/LC. If you go to page 23/47 we do have Commercial Limited (CL) and Commercial General (CG) and Industrial, those are our three categories of intenseness. I think we are ok on the levels of the Commercial and Residential.

Reilly suggested reviewing the following for next meeting:

- What Don handed out
- What we did for R/LC before
- Reilly our major change for "present land use" to "proposed land use" we did add a lot of R/LC along Malabar Road between Weber Road & US1. (re-look at this)
- Look at US 1

Ritter and Board discussed the R/LC that it should be considered residential until it has a business on the property.

Krieger said we should think of the scenarios that we have dealt with in the last two years. What is the difference between RM-6 & R/LC, in fact I consider an ALF more of a business than a residence.

Reilly said just review all the data again and come back next week.

Grant said that Don has a good point and has brought it up several times, (Feb12, 2014 Agenda Book) page 53/58 which says land use will always trump zoning classifications in the past when the town has considered land use change we also handed the corresponding zoning change. Are we going to change land use and have the Council say this is what we want it to be so we'll change the zoning. Reilly explained it is the applicant, the owner of the property that comes before the Board and explains what they want to do.

Krieger asked about receiving something by email from Council in reference to the January 3rd Council Packet. Ritter said it was about the zoning.

H. ADDITIONAL ITEMS FOR FUTURE MEETINGS:

Sherear explained the last gentleman and lady to leave tonight will be coming before this Board next month, he owns property on the corner of Osage & Babcock Street. In 1980's he was approved for something on that property. The property is currently zoned "OI".

I. PUBLIC

J. OLD BUSINESS/NEW BUSINESS:

Krieger talked about the county changing the "storm water rates" and double them, we have an inter-local agreement that we do our own storm water so every property is \$36.00 and they are going to change it to \$72.00. The question Don asked is how much we pay into storm water and how much do we get back? Looking at the budgetary pages it shows money in and money out but does not tell us what the project were. Sherear explains the storm water budget pages. Krieger asks how much does the county have of our money, every year they get 15% of our money because to manage our money they get a percentage. It seems to me that we can do a better job of running our own budget without using the county for our storm water because to the best of my knowledge they never engineered anything in this town.

Krieger said when we signed up for this (storm water inter-local agreement) the county put on their web site what the county storm water is doing for Malabar. If this did not exist and we collected our own money would it be easier, why are we using the county? They make compound interest and 15% besides every year anything that is left over to just hold our money. Sherear said it would be a Bonnie question. Ritter said to ask Bonnie why don't we have the storm water tax come directly to the town? Why does it have to go to the county?

Foster talked about the RTCM 2/3/14 he is glad that Dan Roberts of Palm Bay Utilities came to meeting and reassured Malabar that there has never been forces to hook- up. The fear we had before is that they would either access these property owners or force them to hook-up. Wayne Abare, Dick Korn, and Dan Roberts went to great pains to reassure they have never forced anyone to hook up to city water & sewer. I appreciate that reassurance.

Krieger responded that it doesn't matter what Palm Bay says they are a vendor and Palm Bay has a franchise, the government in Palm Bay can change any year and the people that are making you promises today are not the people there tomorrow, none of that is true. The other point is that a state law trumps Palm Bay. The health department agreeing you have a septic tank has nothing to do with Palm Bay what they are going to do or not do, because they are the vendor. The point is that this town is suppose to be protecting its sovereignty and we have given it away and this planning department here was not given the right to read this agreement before it took place.

New Business:

Krieger said he understood that there was a "veto". Reilly stated we cannot discuss this. Krieger stated that apparently received an email with this text and he did not get one. Foster spoke up and said it was from Debby, Town Clerk/Treasurer. Sherear said everybody should have received it, I will check with Debby.

K. ADJOURN

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

BY:



Pat Reilly, Chair



Denine Sherear, P&Z Board Secretary

3/12/14

Date Approved: as corrected