

**PLANNING AND ZONING ADVISORY BOARD  
SPECIAL MEETING  
DECEMBER 29, 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
	GEORGE FOSTER
	WAYNE ABARE
ALTERNATE:	VACANT
ALTERNATE:	VACANT
TOWN ATTORNEY:	KARL BOHNE
BOARD SECRETARY:	DENINE SHEREAR excused
RECORDING SECRETARY	DEBBY FRANKLIN

**C. PUBLIC HEARING: 1**

Chair stated PH opened. He asked Board if there were any members who had discussions with anyone involved with this or had visited the site. Disclosures need to state the person they spoke with, subject of discussion, and date and time of such conversation or visit. Chair then asked Board for Disclosures. Chair noted none were made.

Applicant Mr. Carmine, owner of subject property, objected. He came to podium and stated that he wanted it on the record that several residents called him to state they were contacted by Mr. Ryan. The residents told him (Carmine) that Mr. Ryan had contacted them to ask them to appear and speak against this project. Mr. Carmine said he has evidence.

Attorney said if there was a conversation or visit it should have been disclosed. Attorney Bohne asked if Mr. Ryan had asked those contacted to take a position. Mr. Ryan said because of the extreme rush of this meeting tonight, he wanted to make sure that all surrounding property owners were aware of the meeting tonight. He only provided information about the request and did not ask them to support any position. He was well aware of his position and did not tell anyone what to support or oppose. He just wanted to make sure the surrounding property owners knew about meeting. Attorney asked Mr. Ryan if he asked anyone to come in and take a position against this. Mr. Ryan said no he did not.

Attorney addressed Mr. Carmine and said if he has evidence to the contrary he has avenues he can pursue.

Chair then read the subject of the Public Hearing:

1. Development Agreement between Malabar Town Council and KellWill, LLC. The Agreement restricts what will be allowed to be developed on the 3(+/-) acre site on the WEST side of Highway 1 known as Parcel Township 28; Range 38; Section 31; Lot 750, aka 1300 Highway 1, Malabar, Florida 32950. Applicant requests a land use and zoning change from Residential/Limited Commercial (R/LC) to Commercial General (CG). The agreement is proposed as a proviso to be

approved before the Land Use (LU) and Zoning Change (ZC) are voted on by Council as a protection to Town against concerns

voiced by some that once it was changed to CG then Adult entertainment, etc. could be developed. Applicant was willing to agree to such deed restrictions prior to the vote by Council on Ord 2015-01. Chair explained the background of the agreement then asked applicant to podium.

Applicant William Carmine is here again and hopes they have had a chance to read the agreement. He and Mr. Bohne went through the list of what could be done in CG that some people were concerned about. They listed those uses as restricted uses on his parcel located on the west side on Highway 1. Hopes this gives assurance so he can proceed.

Chair asked if anyone from Public wished to speak:

Samantha Wiehl, 1230 Highway 1. She has no objections to this project. Mr. Carmine is a local businessman with two successful businesses. This is US 1 and it is a commercial corridor. Her house is also on US1 and also in RLC. She doesn't have any plan to change to CG but has no problem with it. Mr. Carmine is an upstanding citizen; he is not desecrating the land or the river. The fact that he has a successful business and will increase the tax base would be a plus to the Town. The agreement was signed ahead of time and is in good faith and will be attached to the deed. That shows a lot of good faith. The fact that he is willing to restrict what would be permitted speaks for itself.

Chair asked Attorney how Development Agreement was developed. Attorney Bohne said applicant is asking for LU and ZC and the two of them went down the permitted list of uses in CG that were mentioned as concerns and they made them exclusions that would not be allowed on this particular parcel. The east side is Coastal Preservation (CP) and is not part of this application. It is essentially a deed restriction. Statutorily, it expires in 30 years but can be renewed upon mutual agreement. The Dev Agree would be recorded in the land records of Brevard County Clerk of Court and will run with the land. Attorney Bohne said the site plan will be developed and reviewed if the LU and ZC is approved.

PZ Member Ritter said in the "Whereas" it doesn't say why they are doing this and it should include the LU and ZC specifically RLC to CG because no one would bother to ask for the minutes and rest of history behind the Development Agreement. (Note: Staff routinely files such agreements, LU and ZC with the property file so that we can provide complete information to persons interested in purchasing land in Malabar.)

PZ Member Ritter said Development Agreement is vague. She thought it should have more "whereas" to give them more of the "why" it was done. Seems this is being rushed through instead of letting the P&Z Board correct the misinterpretations in the Code. They allowed the school house to change to R/LC. Chair recognized Franklin. Franklin said that the school house was in existence before the Town. When we did become a Town, the regulations were for Floor Area Ratio meaning total sf of all floors. That was in place when Council changed the zoning to LC. The LC has the same 4,000sf max as R/LC. The only change was to allow the new owners to reside there. It is 1200sf larger than allowed not 6,000sf.

PZ Member Ritter said what about Serene Harbor they allowed that to change to R/LC and it was approved. Franklin said that the home was permitted by the County in the 1980's and the zoning was OI then so it was non-conforming. All we did is change one parcel to allow the facility to

accept a grant from the Governor to expand. (Note: Since 2004, P&Z Board and Council have supported changing the entire corridor from OI to R/LC.)

PZ Member Ryan said there is a 30-year term and it can be terminated upon mutual agreement. Attorney said it can be continued or not at that time; or it can be modified, expanded or terminated with mutual agreement.

PZ Member Ritter said this should not be done until they have a site plan. P&Z recommended that the applicant wanting rezoning on Babcock Street should be rejected because the applicant did not provide a site plan.

Chair recognized Franklin who stated for clarification that the P&Z Board was wrong in that instance. A Land Use and/or Zoning Change is a standalone request. The Site Plan review comes later and is reviewed for its own merits.

Attorney said that an application for a site plan for a 10,000sf building for retail sales and services on that site would not have been accepted by Town staff as it did not comply with the Land Development Code.

Chair - PH closed

**MOTION: PZ Member Abare / PZ Member Foster to recommend Council approval of the Development Agreement as proposed.** Discussion:

PZ Member Foster said tonight's meeting is dedicated to the Development Agreement. He commends Mr. Carmine and thinks this is an additional burden whether put on by staff, PZ or Council. He is aware of all the times they have come before and one pothole after another being thrown in front of him. As long as it is as stated. Community has given testimony in support of this. He made a statement at an earlier meeting. Internet check shows no negative comments re: either of his businesses or him personally. He wishes him the best and supports his request.

PZ Member Abare said to Mr. Carmine that the people objected to what it *might become* not what Carmine proposed. From what he remembers, it was more than just the excessive building size in R/LC, it was the retail sales and service that required CG.

PZ Member Ryan has two problems. The Development Agreement does not address the property on the east side of Highway. The other is that the way it is written it can be misinterpreted. He read from the agreement. The Attorney answered saying it is written exactly the way it is written in Table.

PZ Member Abare, said the paragraph on the first page says it only addresses the west side. Attorney said when they do the legal it will only include the property on the west. Attorney said this is a restriction on the use of the land. PZ Member Ritter asked regardless of which way he goes it would require code change. Attorney said his request would be a Small Scale Amendment (SSA). The other would require a Large Scale Amendment (LSA).

PZ Member Ritter has no problem with the proposed use, only the zoning. They should allow the Board to work on correcting the misinterpretations. PZ Member Abare asked why Ritter thinks it is wrong. He said we have already had one meeting on possible changes to R/LC. He said the P&Z tries to come up with what they think the town would like. The next P&Z Board could have completely different ideas. PZ Member Ritter said there are items that aren't interpreted right. We

drop lines... PZ Member Abare said back off the minutia; we are talking about one property. She said she is entitled to her comments. He said he is entitled to respond. Chair said that the agreement addressed all of her concerns.

PZ Member Ryan said he is not against the project but thinks the man should have asked ahead of time. Chair recognized Franklin. Franklin said it was in each of their packets three times that

Mr. Carmine came to P&Z Board first and introduced his project and said he had outgrown his current location and wanted to relocate to Malabar and needed to build a 10,000sf building. Staff told him the only zoning that would allow retail sales and services at that size is CG. P&Z unanimously supported his project. It is all in the minutes that were part of the packages prepared for Board.

Attorney addressed what Ryan said. What normally happens in these cases. His experience is you make the contract contingent on the approval of the rezoning. In this case Carmine was led to believe that it would be supported without objection. Attorney said Council supported this and only restricts the use – a deed restrictions. Things can be changed.

PZ Member Foster, from the very beginning, Carmine has come to staff, clearly, honestly and accurately, and followed the steps to the letter. Everyone in the process was in agreement. The punch line was that everyone supported his proposed use. Every piece of the puzzle. He has tied himself into a deed restriction. You asked him to do the agreement. Our bureaucracy keeps throwing him obstacles. We give him the path from start to finish and then throw in a twist and tell him he should have known. PZ Member Foster told Board to be adults here and help this man move forward. He (Foster) is also a businessman and he would not have the patience that Carmine has displayed throughout this. Audience applauds.

PZ Member Ryan said the decision can't be made because of potential tax revenue, or him being a good business man. He said you can't let emotions get involved. PZ Member Ryan said let him build in RLC...or change to CL as a conditional use; or change to CG with no agreement. PZ Member Ritter said the 4<sup>th</sup> option is to change to CG with agreement.

PZ Member Abare is looking at R/LC deciding what it should be changed. Modifying R/LC it is not a good fit. If another business man wants to do something then it will looked at on its own merit.

Chair said no residence is allowed in CG. Franklin said they can convert their home into a commercial structure to meet code but the key is they can no longer live there.

Attorney said we are getting off track. He asked if the LU and ZC request been before P&Z. Yes. Attorney said it is out of their hands for that. Attorney said the P&Z Board is appreciated by Council. Discussing the zoning and LU is mute. PZ Member Abare called for the question.

**ROLL VOTE: Abare, Aye; Ryan, Nay; Foster, Aye; Ritter, Nay; Reilly, Aye. Motion passed 3 to 2.**

#### **D. ADJOURN**

There being no further business to discuss, **MOTION: PZ Member Abare / PZ Member Ritter to adjourn this meeting. Vote: All Ayes.** The meeting adjourned 8:29 P.M.

BY:

Patrick T. Reilly  
Pat Reilly, Chair

Transcribed by:  
Debby Franklin  
Debby Franklin, C.M.C.  
Town Clerk/Treasurer

1/28/15  
Date Approved: