

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2024-04

Held on Wednesday, April 03, 2024, in the City Hall Council Chambers, 120 Malabar Road, SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, City Hall, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Chairperson Randall Olszewski called the meeting to order at approximately 6:00 p.m.

Mr. Donald Boerema led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIR:	Randall Olszewski	Present
VICE CHAIR:	Robert Good	Absent (Excused)
MEMBER:	Donald Boerema	Present
MEMBER:	Michael Jaffe	Present
MEMBER:	Leeta Jordan	Present
MEMBER:	Jeffrey McLeod	Present
MEMBER:	Rainer Warner	Present
NON-VOTING MEMBER:	VACANT (School Board Appointee)	Present

CITY STAFF: Present were Ms. Lisa Frazier, AICP, Growth Management Director; Ms. Althea Jefferson, AICP, Assistant Growth Management Director; Ms. Tania Ramos, Principal Planner; Ms. Kimberly Haigler, Senior Planner; Ms. Chandra Powell, Recording Secretary; Mr. Michael Rodriguez, Chief Deputy City Attorney

Mr. Good's absence was excused.

ADOPTION OF MINUTES:

1. P&Z/LPA Minutes - Regular Meeting 2024-03, March 6, 2024

Motion by Mr. McLeod, **Seconded** by Ms. Jordan to approve the minutes as presented.

Result: Carried 6 to 0

Yea: Mr. Olszewski, Mr. Boerema, Mr. Jaffe, Ms. Jordan, Mr. Mcleod, Mr. Warner

Nay: None

Abstain: None

ANNOUNCEMENTS:

1. Mr. Olszewski addressed the audience on the meeting procedures and explained that the Planning and Zoning Board/Local Planning Agency consists of volunteers who act as an advisory board to the City Council.

NEW BUSINESS:

1. **CP23-00016 - Malabar Village - Vacation Finance, LLC, William Rocker (Angel Pinero, P.E., Dynamic Engineering Consultants, P.C., Rep.) - A Small-Scale Comprehensive Plan Future Land Use Map Amendment from COM, Commercial to NC, Neighborhood Center. Tax Parcel 4, Section 4, Township 29, Range 36, Brevard County, Florida, containing approximately 32.8 acres. Located south of and adjacent to Malabar Road SW, in the vicinity of the southwest intersection of Malabar Road SW and Allison Drive SW**

Ms. Haigler presented the staff report for Case CP23-00016. Staff recommended Case CP23-00016 for denial.

Mr. Mathew Scott, Esq., Law Firm of Greenspoon Marder LLP (zoning attorney representing Bridge Asset Management) stated that his client was under contract to purchase the subject site with a goal to create a mixed-use project called Malabar Village. He gave a PowerPoint overview of Case CP23-00016 that included associated Cases PD23-00006 and FD23-00009. He explained how the 30-acre commercial site had sat vacant for decades and that a less intense mixed use with a Neighborhood Center designation would offer a better chance for development. Denial of the less intense land use would not eliminate potential traffic. He described the vision to create three large commercial pods on Malabar Road with two access points, garden-style apartments with amenities to the rear, and integrated sidewalks for residents and the surrounding neighborhood to access the restaurants, shopping, and other neighborhood services. He stated that the residential units at the south end would be reduced to two-stories, landscaped, and fenced to appease the adjacent residents of unincorporated Brevard County that had expressed compatibility concerns during the Citizen Participation Plan meeting. There would

also be a restriction on self-storage use. The plan was to develop the commercial area first with the residential area to follow. He was open to including an affordable housing component that would fill a gap in Palm Bay for attainable entry-level housing to assist renters who could not afford or were not ready for a home. He indicated the 50-foot width of land along the entire frontage of the site that would be dedicated to the widening of Malabar Road prior to building permit. The project would also include a traffic signal at the Malabar Road and Thunderbird Avenue NW intersection and eastbound and westbound turn lanes at the property's two access points. The proposed mixed-use development would generate less traffic volume than what the site was currently entitled to. If approved, the project would pay almost \$3 Million in impact fees, provide yearly tax revenues, and create job opportunities. He stated that the applicant would work with staff to preserve as many trees as possible.

Mr. Boerema asked if there was a picture depicting the proposed buffering, and he asked about the building heights. Mr. Scott indicated the south side of the project where the wall and landscape buffer were proposed, but there were no images with the detail at this time. Buildings on the south side would be two stories high and the interior buildings would be three stories.

Ms. Jordan asked if the smaller two-story buildings were part of the 424-unit count, and she asked about the low-income housing component. Mr. Scott confirmed that the unit count included the two-story buildings. He stated that the affordable housing component would not be subsidized Section 8 housing, and that the suggestion was for a percentage of the units to be deed restricted for rent-controlled housing.

Mr. Warner wanted to know how much of the 32-acre commercial site would actually be dedicated for commercial development. Focus appeared to be on residential development with commercial property removed to allow for the residential use. He asked if the land to widen Malabar Road and the proposed traffic signal were dependent upon the approval of the submitted proposal. Mr. Scott stated that 11.2 acres would be dedicated to commercial use. The land for the widening of Malabar Road and the traffic improvements were requirements of the project.

Mr. McLeod inquired how the recreation and open space requirements would be met when there were onsite wetlands. Mr. Scott stated that if the project was approved by City Council, site plans would be forthcoming where functional recreation and open space areas within the 20-acres would be addressed with staff. Complying with the requirement might reduce the number of residential units.

Mr. Jaffe questioned whether the project would be developed under the Live Local Act, meeting current regulations, if the requested land use and development plans were not approved. At present, a mixed-use commercial and apartment project could be built without offering the buffer or offsite improvements. He asked if a restriction was possible on car washes and quick-service drive-through restaurants. Mr. Scott stated that developing under the current regulations was an option. He agreed to a restriction on car washes but would have to consult with his client regarding the drive-through restaurants.

Mr. Olszewski remarked on the distance of the fire station nearest to the site and the lack of a ladder truck. He asked if the project was in line with the widening and improvement plans for Malabar Road recently presented to City Council. Mr. Scott stated that the Fire Department had reviewed the project and had not indicated any issues concerning fire station coverage. He said that he had met with Brevard County engineering staff regarding the Malabar Road improvements. Mr. Angel Pinero, P.E., Dynamic Engineering Consultants, P.C. (representative for the applicant) added that the traffic details would be worked out at the Brevard County permitting review stage.

Mr. Olszewski disclosed that he had received emails regarding the project but had not responded.

The floor was opened for public comments, and there was one item of correspondence in the file in opposition to the request.

Ms. Brenda Chrieki (resident of Malabar Lakes West) spoke against the request. She stated that Malabar Lakes West consisted of 41 homes with residents who worked and served in Palm Bay. She described an incident where the developer had entered Malabar Lakes West, parked on the private road and ruined the sod, to access and survey trees on the subject property. Additional apartments were not needed in Palm Bay and lower-income apartments were already located on Malabar Road. The lights from the two-story apartments would shine into the adjacent homes, and traffic in the area was already bumper to bumper. Her suggestion was for the development to be placed on hold until Malabar Road was widened.

Mr. Scott Virgin (resident of Malabar Lakes West) spoke against the request. He remarked on the issue of Malabar Lakes West being placed between two traffic signals, the high school morning traffic, concerns regarding delayed emergency services, and the potential overload of the electrical grid. He felt that Malabar Lakes West would also need a traffic signal.

Mr. Daniel Holmes (president of Malabar Lakes West Phase I Homeowners Association) spoke against the request. He indicated how the residential component of the project would bring undesired activity and crime into the area as the adjacent community had already done so. The area needed and welcomed commercial development. He reiterated concerns regarding traffic, the delay in emergency responses, and the lack of a ladder truck to service the proposed three-story apartment buildings. He mentioned how the lower-income apartments would abut homes in Malabar Lakes West with a median price of \$400,000 to \$500,000.

Ms. Eileen Sepp (resident at Freil Road NE) spoke against the request. She stated that renters did not pay taxes and low-income housing received abatements. A similar complex in the past had brought crime into her area. She felt that the City was growing too fast and development should be stopped until groundwater, older infrastructure, and emergency resources could be addressed.

Mr. Thomas Gaum (resident at Lantana Court NW) spoke against the request and elaborated on the item of correspondence he had previously submitted. The subject proposal was incompatible with the Comprehensive Plan as it would encroach into an established single-family residential neighborhood with proposed high-density residential and commercial uses. The development would significantly increase traffic on Malabar Road and was premature without supporting infrastructure in place. The road widening of Malabar Road was years away and might not mitigate the additional traffic. He said that a car wash or dollar store at the site was preferable to 424 homes.

Mr. Robert Stise (resident at Windbrook Drive SE) spoke against the request. He stated that the project should not be allowed due to the lack of infrastructure. Malabar Road could not handle 1,000 more residents or 800 more vehicles, and green space was not indicated on the plans. He commented on how low-income housing would bring a criminal element into the neighborhood, and that the emergency response time for the area was inadequate.

Mr. Bill Battin (resident at Ocean Spray Street SW) spoke against the request. He stated that the City had invested time and money into the recent update of the Comprehensive Plan, so he questioned the need for the proposed change. Although the site had remained vacant for a couple of decades, the City was only 60 years old and 32 acres of commercial land on a major road would be lost for future growth. He was opposed to any tax abatement because of land that was required for the widening of Malabar Road. He commented that the retention pond did not meet the green space requirement.

Ms. Pat Dalpra (resident at Georges Avenue NE) spoke against the request. Developers promised commercial development with their residential projects but failed on the commercial aspect. She stated that development should be slowed down until the City could figure out what should be done.

In response to the comments from the audience, Mr. Scott stated that the sod damage was an unfortunate mistake by a contractor, and that the sod had been replaced at the applicant's expense. He explained that affordable housing was workforce housing and should not be viewed as an unwelcome element to the City. He stated a willingness to meet with the Malabar Lakes West residents to further discuss their concerns. He reminded the board that the property could currently be developed commercially at a higher intensity, and that the subject proposal was superior to all alternatives.

The floor was closed for public comments.

Mr. Warner stated that he saw the benefit of the subject proposal but not at the requested location. The traffic study for the property indicated that Malabar Road would continuously exceed capacity, which would have an impact on the level of service. He had a problem with just 11 of 30 acres remaining commercial, and both the Comprehensive Plan and Economic Development Strategic Plan identified the subject area of Malabar Road as not having enough commercial land.

Motion by Mr. Boerema, **Seconded** by Mr. McLeod to submit Case CP23-00016 to the City Council for denial.

Mr. Boerema remarked on Malabar Road being one of three primarily commercial roads in the City, and that commercial land was needed. He stated that a two-story commercial building would be preferable to allowing hundreds of residential units within the community.

Mr. McLeod stated that he preferred for the site to be developed commercially; however, area residents might regret the decision in the future.

Mr. Olszewski agreed that shunning affordable housing was harmful to society, and there was a dire need for affordable housing. The subject property, however, was not an appropriate housing project at the density proposed based on the Comprehensive Plan.

A vote was called on the **Motion** by Mr. Boerema, **Seconded** by Mr. McLeod to submit Case CP23-00016 to the City Council for denial.

Result: Carried 6 to 0

Yea: Mr. Olszewski, Mr. Boerema, Mr. Jaffe, Ms. Jordan, Mr. McLeod, Mr. Warner

Nay: None

Abstain: None

As a result of the board's denial of Case CP23-00016, Mr. Rodriguez informed the board and applicant of the option to hear Cases PD23-00006 and FD23-00009. Mr. Scott asked that the cases be heard so that the requests could advance to City Council with board recommendations. The board proceeded to hear the cases.

2. ****PD23-00006 - Malabar Village - Vacation Finance, LLC, William Rocker (Angel Pinero, P.E., Dynamic Engineering Consultants, P.C., Rep.) - A Preliminary Development Plan for a proposed PUD to allow for a mixed-use development containing 424 multiple-family units and 10.73 commercial acres, to be known as Malabar Village. Tax Parcel 4, Section 4, Township 29, Range 36, Brevard County, Florida, containing approximately 32.8 acres. Located south of and adjacent to Malabar Road SW, in the vicinity of the southwest intersection of Malabar Road SW and Allison Drive SW**

Ms. Haigler presented the staff report for Case PD23-00006. Staff recommended Case PD23-00006 for approval pending the approval of Case CP23-00016.

Mr. Mathew Scott, Esq., Law Firm of Greenspoon Marder LLP (zoning attorney representing Bridge Asset Management) stipulated that the record reflect his presentation and comments under Case CP23-00016.

The floor was opened for public comments, and there was one item of correspondence in the file in opposition to the request.

Mr. Thomas Gaum (resident at Lantana Court NW) asked that the record reflect his comments spoken against the request under Case CP23-00016. In addition, he believed that more signalization on a two-lane road would back up the traffic, and that the turn lane proposed near the park entrance would not fit by Florida Department of Transportation standards.

Mr. Bill Battin (resident at Ocean Spray Street SW) spoke against the request. He stated that the board should deny the case based on their denial of the land use amendment.

Mr. Robert Stise (resident at Windbrook Drive SE) spoke against the request. He stated that the City should take a hard look at infrastructure and safety, the lack of fire equipment, and traffic. He was not opposed to rent-controlled apartments, but the project was not right for the existing neighborhood.

Mr. Daniel Holmes (president of Malabar Lakes West Phase I Homeowners Association) asked that the record reflect his comments spoken against the request under Case CP23-00016. In addition, he stated that Malabar Lakes West had to call the police regarding the sod damage caused by the applicant, and that the repairs the applicant was forced to make were inadequate. The community was not opposed to low-income working residents, but the project was not right for the location.

Ms. Brenda Chrieki (resident of Malabar Lakes West) spoke against the request. She stated that the project did not fit with the area and would increase traffic. The neighborhood was not opposed to low-income residents, but apartments were not needed at the location, and any development should align with the surrounding neighborhood.

The floor was closed for public comments.

Mr. Boerema noted that the property was already commercially zoned and could currently be developed as such.

Motion by Mr. Boerema, **Seconded** by Ms. Jordan to submit Case PD23-00006 to the City Council for denial.

Mr. Olszewski remarked on the incompatibility of the request with the Comprehensive Plan.

A vote was called on the **Motion** by Mr. Boerema, **Seconded** by Ms. Jordan to submit Case PD23-00006 to the City Council for denial.

Result: Carried 6 to 0

Yea: Mr. Olszewski, Mr. Boerema, Mr. Jaffe, Ms. Jordan, Mr. Mcleod, Mr. Warner

Nay: None

Abstain: None

3. ****FD23-00009 - Malabar Village - Vacation Finance, LLC, William Rocker (Angel Pinero, P.E., Dynamic Engineering Consultants, P.C., Rep.) - A Final Development Plan for a proposed PUD to allow for a mixed-use development containing 424 multiple-family units and 10.73 commercial acres, to be known as Malabar Village. Tax Parcel 4, Section 4, Township 29, Range 36, Brevard County, Florida, containing approximately 32.8 acres. Located south of and adjacent to Malabar Road SW, in the vicinity of the southwest intersection of Malabar Road SW and Allison Drive SW**

Ms. Haigler presented the staff report for Case FD23-00009. Staff recommended Case FD23-00009 for approval, subject to staff review and approval of the traffic study and pending the approval of Case CP23-00016.

Mr. Warner questioned why the staff report mentioned 668 multiple-family residential units. Ms. Haigler corrected that the request was for 424 units.

Mr. Mathew Scott, Esq., Law Firm of Greenspoon Marder LLP (zoning attorney representing Bridge Asset Management) stipulated that the record reflect his presentation and comments under Case CP23-00016.

The floor was opened for public comments, and there was one item of correspondence in the file in opposition to the request.

Mr. Thomas Gaum (resident at Lantana Court NW) asked that the record reflect his comments spoken against the request under Cases CP23-00016 and PD23-00006.

Mr. Scott Virgin (resident of Malabar Lakes West) spoke against the request. He stated that traffic would be an issue regardless of how the property was developed. He asked if there would be another traffic signal within the small area. Positioning Malabar Lakes West between two traffic signals would need to be rectified.

Mr. Bill Battin (resident at Ocean Spray Street SW) spoke against the request. He recommended that the board deny the case based on their denial of the preliminary development plan.

Mr. Robert Stise (resident at Windbrook Drive SE) asked that the record reflect his comments spoken against the request under Cases CP23-00016 and PD23-00006. The infrastructure, timing, and location were not right.

Ms. Brenda Chrieki (resident of Malabar Lakes West) asked that the record reflect her comments spoken against the request under Cases CP23-00016 and PD23-00006. She asked that if the project was approved, the traffic signal be located at the end away from Malabar Lakes West to allow the residents to get out.

The floor was closed for public comments.

Mr. Boerema stated that Malabar Road was a Brevard County road, so area residents should also contact Brevard County about their road concerns.

Motion by Mr. Boerema, **Seconded** by Mr. McLeod to submit Case FD23-00009 to the City Council for denial.

Mr. Olszewski remarked on the incompatibility of the request with the Comprehensive Plan, the traffic situation, and how 424 multiple-family units was not a good fit for the area based on published engineering studies.

A vote was called on the **Motion** by Mr. Boerema, **Seconded** by Mr. McLeod to submit Case FD23-00009 to the City Council for denial.

Result: Carried 6 to 0

Yea: Mr. Olszewski, Mr. Boerema, Mr. Jaffe, Ms. Jordan, Mr. McLeod, Mr. Warner

Nay: None

Abstain: None

OTHER BUSINESS:

1. Proposed Amendment to the Planning and Zoning Board By-Laws

Ms. Frazier presented the proposed amendments to the Planning and Zoning Board By-Laws. Board action was required to amend the by-laws.

Mr. Olszewski read Section 51.08 of the Code Ordinances that indicated the time limits that were proposed. He believed the time limits were too broad and ambiguous, and he would not be comfortable determining aggrieved parties during the meetings.

Mr. McLeod remarked on the chair's ability to extend time limits. Ms. Jordan commented on how adopting the practices established by City Council would mean that aggrieved parties were pre-determined by the City Attorney's Office. Mr. Warner

asked if there would be a limitation on the number of aggrieved parties allowed to speak on a matter.

Mr. Rodriguez explained that aggrieved or adversely affected parties were defined by Florida Statute 163.3215.2, and that Section 59.03 of the City code required the party to provide written notice to the City prior to hearings so that the board would be apprised beforehand. However, final determination would be made by the courts as to whether the persons were an aggrieved or adversely affected party. There were no limitations on the number of declared aggrieved parties that could speak on a matter. The chair also had the right to allow non-aggrieved speakers to designate a spokesperson and combine or extend time limits.

The floor was opened for public comments.

Mr. Bill Battin (resident at Ocean Spray Street SW) questioned why the adoption of the time limits was necessary as the speaker-oath cards already imposed a 3-minute time limit, and that the agenda informed the public of the notification requirements for aggrieved or adversely affected persons. He noted that the aggrieved parties had to abut the properties in question.

Mr. Robert Stise (resident at Windbrook Drive SE) wanted assurance that a group that was not considered aggrieved or adversely affected persons would be allowed to present a combined presentation. Mr. Olszewski re-confirmed that this would be permitted at the chair's discretion.

The floor was closed for public comments.

Motion by Ms. Jordan, **Seconded** by Mr. McLeod to submit the Planning and Zoning Board By-Laws as amended to the City Council for approval.

Result: Carried 5 to 1

Yea: Mr. Boerema, Mr. Jaffe, Ms. Jordan, Mr. Mcleod, Mr. Warner

Nay: Mr. Olszewski

Abstain: None

2. Growth Management Department Presentation

Ms. Frazier gave a PowerPoint overview of the Growth Management Department that synopsized the divisions, functions, and application timelines and processes of the department. The board was provided with a copy of the presentation.

Mr. Olszewski and Mr. McLeod voiced appreciation of staff and their efforts. Mr. Warner acknowledged the improvements in the staff report packages with the new review times.

Ms. Jordan indicated download issues with the new online system. Ms. Frazier reminded the board to contact staff whenever assistance was needed. She shared the numbers for the applications and permits the department had handled since February.

3. City Attorney Presentation

Mr. Rodriguez gave a PowerPoint overview of the Sunshine Law, Article I, Section 24, Florida Constitution and Section 286.011, Florida Statutes, as applicable to the Planning and Zoning Board. He addressed appropriate and inappropriate communications, meeting procedures and processes, infractions, penalties and remedies, and he answered questions. The board was provided with a copy of the presentation.

Mr. Rodriguez also addressed records requests of personal devices. He defined public records and explained that board packets on personal devices were considered copies and were not subject to public records requests. The content of emails or texts determined whether the items were a public record.

Mr. Warner asked if there was a statute for when it would be appropriate to discuss past cases. Mr. Rodriguez advised that past cases could come back before the board so should not be discussed outside a public hearing.

ADJOURNMENT:

The meeting was adjourned at approximately 9:14 p.m.

Randall Olszewski, CHAIRPERSON

Attest:

Chandra Powell, SECRETARY

**Quasi-Judicial Proceeding.