

**TOWN OF MALABAR
REGULAR TOWN COUNCIL MEETING
MONDAY OCTOBER 12, 2015
7:30PM
2725 MALABAR ROAD
MALABAR, FLORIDA**

MINUTES

A. CALL TO ORDER, PRAYER AND PLEDGE

Chair called the meeting to order at 7:30 P.M. Prayer and Pledge let by CM Ball with special acknowledgement to Roger Cloutier's passing and to his family. (Building Official Roger Cloutier passed 10/9/15.)

B. ROLL CALL

Council Chair:	Marisa Acquaviva
Council Vice-Chair:	Brian Vail
Council Member:	Grant Ball
Council Member:	Don Krieger
Council Member:	Dick Korn
Mayor	Carl A. Beatty
Town Attorney:	Karl W. Bohne, Jr.
Town Clerk/Treasurer:	Debby K. Franklin
Recording Secretary/DTC:	Cynthia Kelley

Clerk stated for the record Malabar Fire Chief Christopher Robinson is also present.

C. ADDITIONS/DELETIONS/CHANGES: None

D. PUBLIC COMMENTS: Comments at this point may address items **NOT** on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) **Five (5) Minute Limit per Speaker.**

E. PUBLIC HEARINGS: 0

**F. ACTION ITEMS: 1
MISCELLANEOUS: 1**

1. **Approve Contract with Administrator**
Exhibit: Agenda Report No. 1
Recommendation: Request Action

Chair announced she had multiple speaker cards.

Karlene Conroy, 1865 Alexander Lane, came forward and addressed Council. She was not happy to hear that Debra Krueger, the top choice of the committee and her top choice, was scared away from the job; feels disenchanting. Now that she hears of the second choice for the position, she feels disenfranchised as a member of the TA Selection Committee. She is disenfranchised that Council is offering the position to someone who didn't even make the top 10 chosen by the Committee and disheartened that the job was offered to Mr. Hoyt; someone who didn't make the cut because of qualifications by both Council and the TA Selection Committee. The next qualified person, Jeff McKnight, has been bumped to third choice. She volunteered to

be on the committee to choose a qualified candidate that would help to make Malabar better. It is her hope that as Council goes forward with this choice, they take the suggestions of the Committee and make the choice based on the qualifications for the person who is the best qualified; keeping the duties of the Town Administrator and Town Clerk separate. She asked that Council rescind their offer to Mr. Hoyt and make an offer to Mr. McKnight. Be a better Council and do the right thing.

Jeff McKnight, 2005 Flashy Lane, came forward and addressed Council. He is not here to advocate for himself or the Town Administrator position; here as a resident. He's thought about this a lot; to come with a logical reason to progress in this way and he can't figure it out. The only thing he can come up with is that this is a vote against him. If that is the case, take me out of the mix and go with the next best qualified candidate who would be Dave Wilkerson. He's got the experience and would do our Town some good. Just ignore my place and offer it to someone who will do the Town of Malabar some good.

Liz Ritter, 2860 Orange Avenue, came forward to address Council. She stated she spoke to all the Council Members and they understand how angry some people are with the work that was done with the selection committee. Each one of you have your own businesses; need to treat each other as you would your customers. You need to get along and communicate better. It's been said that "nobody comes to the meetings" and "no one cares". Well, it's because of the reaction they get when asked for their assistance. It is her hope that, and she knows that Council has the final decision, but to respect everybody's feelings. If you have to start over, then start over. Please work together; no one has to have a security guard standing at their door. This is because of things that have been happening. So you need to work together.

Douglas Hoyt, 2250 Duncil Lane, came forward to address Council. He's a bit surprised that the TA position has been changed from being based on ability and qualifications to one of political aspirations. He could have had people here this evening to speak on his behalf but, with trying to be efficient, he brought in a petition of 75 signatures supporting him as TA. His priority items, if he's chosen, are getting the community grants to relieve some of the financial situations for the Town and looking into the drainage issues (grants to fix roads and drainage). He's lived here for 13 years; he's been hearing the roads will be fixed. If you want the same thing, keep doing it the same way. With his engineering and managing experience, he feels he can hopefully, not guaranteed, bring some new ideas to get things done that are of concern to the citizenry as well as himself.

Skip Hard, 2560 Hard Lane, came forward and addressed Council. As old business, he stated that he sent out an email that quoted Shakespeare. He didn't mean it as a threat; he stated that he has seen this Council as a dysfunctional council. What he was saying with "a pox on both your houses" is you can all go to hell. He still feels this way. He was on the selection committee; doesn't have anything against Mr. Hoyt. He was his number 2 choice. He is disappointed that he was bumped up; he's not against the man as such, he's frustrated with the method that got him here.

Dr. John Seybold, 1830 Corey Road, came forward and addressed Council. He also expressed his concern on the process here. He was on the selection committee as well. He feels disenfranchised as well; gives the perception of input from the residents when there really isn't any. The amount of support that was here at the last meeting doesn't seem to carry any weight at all. With the objective evaluation, Mr. Hoyt didn't make the top 8 selection on the list. Now that he's the number 2 selection, it just doesn't ring true.

MOTION: CM Vail / CM Korn to approve the contract as amended and agreed to by Mr. Hoyt.

Discussion: CM Krieger doesn't understand why we are making a motion to approve the contract. There was a meeting with the attorney with the first candidate to negotiate the contract. Was there a meeting with the second candidate? Did negotiations take place? How did this come about that we have a finished contract? What we should be doing is voting on to negotiate with Mr. Hoyt. But we're kind of short-circuiting the process. CM Vail stated we are approving the contract for the Town Administrator. CM Krieger stated that agenda is inappropriate; it wasn't done correctly.

CM Acquaviva stated that she would defer to the attorney. She stated that Krueger had met with him and Franklin and negotiated the contract that we were going to approve or disapprove that Monday night. So number 2 met with the lawyer. Bohne stated he did not meet with Mr. Hoyt. Franklin stated that Hoyt met with her and she could speak to it. CM Acquaviva gave her the floor.

Franklin addressed Council. She presented the same contract to Hoyt that was presented to Krueger. Krueger met with Attorney and me and countered with her input and that is what was submitted to Council for the 10/5/15 meeting that was ultimately cancelled after Krueger withdrew her name from consideration. The original contract that was submitted to Krueger was given to Hoyt. He marked it up and gave it back. The contract language was changed and those changes were noted for council and it was sent to Attorney. Hoyt reduced the salary to less than what council proposed. Hoyt declined the car allowance; Hoyt declined the insurance and benefits; what was there to negotiate? CM Krieger asked who made that decision. Franklin said there was nothing to decide, nothing to negotiate. CM Krieger said there were many things to be negotiated.

CM Acquaviva made comments regarding the negotiations of the contract with Krueger. Atty Bohne spoke to this; he and Clerk met with Krueger with contract provided by Council. After the meeting, her counter offer was revised in the contract. Atty Bohne, with a legal point of view, stated he was ok with the changes made to the contract. That is exactly what Franklin did. CM Krieger state that council should have been given the contract to review before it was offered. Franklin stated that what Hoyt offered to do the job for was less than what Council had budgeted for.

CM Korn stated that he is losing his willpower to remain quiet. The purpose of the meeting tonight is to review and act upon the contract to the next in line to hire after Krueger. The decision was made on who was the second choice in a past meeting. The contract was received early enough to review and asked questions of staff. The attorney's bill was \$3500 last month and it was mostly about this subject with questions that could have been answered by staff. He asked if all of the Council had a chance to review the contract and if not, shame on you. Do we like this contract; if not, let's discuss it now. CM Korn stated he will not be here for the 11/2/15 meeting; and is on record of asking that no personnel actions or ordinances be on the agenda. That would push this out until December when the decision should have been made in June.

CM Vail asked Atty Bohne if he was okay with the contract. He's read the contract and said he is okay with contract. Atty Bohne stated that it is not up to him to offer the job at \$55,000 and no car allowance. Atty Bohne stated, legally, that the contract is fine.

Chair Acquaviva stated that he (Hoyt) walked into the room and made the offer to do the job for 55K. She's good with the contract.

CM Ball stated he doesn't have any issues with the contract. He made his feelings known at the last meeting. If the contract is good, we need to vote. If not, let's get it out and go over it.

Atty Bohne stated that this is a conditional offer, based on the background check.

CM Korn stated everyone had spoken and called for the question; CM Krieger stated that he still has questions. The 90 days in article 1 he has an issue with. We are getting into the holiday season; this should be work days not calendar days. Atty Bohne stated that it has to be consistent with the personnel policies. Franklin said the personnel policy is 90 calendar days. He can waive the benefits but it can't be contrary to the personnel policy.

CM Krieger asked why was ICMA crossed and replaced with FCCMA. Atty Bohne said the FCCMA is a more local, hands on association for city and county managers, compared to the ICMA which is a more international association with additional members. CM Krieger said in Article III, employee may be entitled; Bohne stated this was done by the previous Council. CM Krieger has issues with this entire paragraph in 3.03. Is this necessary? Can't reduce without reducing the entire town's salary; Bohne stated if it is for fiscal reasons, yes you can. Bohne stated that it is not necessary but is there as a comfort zone for the TA. Bohne stated that salary reduction is usually done because of poor performance. If it is a regular staff employee, you wouldn't be able to do this without due process.

CM Krieger had questions about the 18 vacation days; CM Vail stated that he asked about this and was lead to believe that this is for executive positions. Franklin stated that in an earlier meeting, she and Kelley had put together a table showing perks and benefits of Administrators/Managers in Brevard County. We were very conservative; most of the others were in the 20's for vacation days. CM Krieger stated it should be 12 vacation days per year; we have had to pay out \$30,000 to \$40,000 when people have left. They need to use one year plus one quarter; they need to use it or lose it. Franklin stated that this contract now has caps in it for vacation/sick days. It matches the caps in the Employee Manual and is capped at 400 hours for vacation and 240 hours for sick leave. It is the same as the other employees. This was not the case with the previous two administrators; that's why they walked out with so much money.

Article V; termination after 90 days = 90 calendar days. If starting this contract now, this would include Thanksgiving and Christmas days. Section 5.01 of the same paragraph 2 months and 3 three month's pay; CM Krieger said he feels it should be 1 month and 2 months. . Bohne stated this is all in the negotiations.

5.02 Pay aggregate = asked this to be defined. Does this have anything to do with vacation and sick pay? CM Vail stated we have no obligation to pay if let go within the 90 day probation period. Bohne stated its \$55,000. If he is let go half way through, you don't have to pay the remainder of the \$55,000. Full pay and benefits are at Town Council's discretion to pay or not if suspended if person not performing, then they can be let go.

Performance Evaluation says shall be used; should be may be used. CM Acquaviva asked why. CM Krieger stated that if you constrict to just this, it could be actually used against the person. Those are the issues he saw.

CM Krieger stated that he had one more thing to say before proceeding. He is speaking of the 2nd and 3rd candidates; they both got 3/2 votes. Whether they accept the contract or not. They were both equivalent. There was only one difference in the vote and it was Marisa. This is CM Acquaviva's legacy. She said she's good. She will sleep well at night. CM Korn stated that the word heard is shall to be changed to may. 5.01- 1 month aggregate and 2 months aggregate salary.

Bohne stated that Krueger wanted it that way because it takes time to get another job and get compensation. That was her rationale. It was an additional comfort to cover the time while looking for another position.

Doug Hoyt came forward to discuss in the contract. One is 5.01 equal to one month aggregate salary within 1 year of employment and change to 2 months aggregate salary after one year.

The evaluation shall be is changed to may be. Bohne stated that the numbers are out of sequence. Amount of time is negotiable how he earns it is not negotiable. Vail and Acquaviva are fine with it. Leaving it at 1 ½ days of vacation a month; he's not taking any benefits, car allowance or participating in the retirement. He is trying to do his part in helping with the financial burden on the Town. (applause from the audience)

Nancy Borton wanted to share one thing. She's spoken to a couple of you, if have to, take it back to the beginning. She is for Debby Franklin. You have someone in your own house that can do the job better than anyone else. Give some thought to what you have in your own house. (applause from audience)

AMENDED MOTION: CM Vail / Korn to accept the contract as amended. VOTE: 4 Ayes; 1 Nay (Krieger). Motion approved 4 to 1.

G. DISCUSSION: 0

H. STAFF REPORTS - nothing

I. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Ball - it seems, at this point, that the TA position behind us; publically thanked Franklin for all of her help and thanked Denine Sherear and Deputy Town Clerk, Cindi Kelley as well. They all stepped up and took care of things and he didn't hear any complaints, worked extra hours to get it done. CM Acquaviva agreed (applause from the audience).

Franklin stated she does appreciate the acknowledgement made by CM Ball. She is grateful that it has documented that I have a 4 to 1 vote of support. She mentioned the importance of SW projects; with stepping in as acting TA, it has been difficult getting things started with the projects.

CM Vail – nothing at this time

CM Krieger – nothing at this time

CM Korn – spoke of Roger's passing and stated if anyone needs information, TC will be able to answer questions. Franklin stated that the information was sent out to everyone; Council, Boards and contractors. A card on the table to sign if anyone wishes to do so.

CM Acquaviva – nothing at this time

Mayor Beatty – nothing at this time

J. PUBLIC COMMENTS: General Items (Speaker Card Required)

K. ANNOUNCEMENTS:

- (2) Vacancies on the Board of Adjustment;
- (4) Vacancies on the Park and Recreation Board;
- (1) Vacancy on the Planning & Zoning Board

L. ADJOURNMENT: MOTION: CM Korn / CM Vail to adjourn. VOTE: All Ayes.
Meeting adjourned at 8:20 pm.

Marisa Acquaviva,
Council Chair

(seal)

ATTEST:

Debby K Franklin, C.M.C.
Town Clerk/Treasurer

Minutes approved:
11/2/2015