

MALABAR TOWN COUNCIL REGULAR MEETING
May 19, 2014 7:30 PM

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER:

The meeting was called to order at 7:30 pm by Council Chair Steve Rivet. The prayer and pledge were led by Council Member Marisa Acquaviva.

B. ROLL CALL:

COUNCIL CHAIR
VICE-CHAIR/MAYOR:
COUNCIL MEMBERS:

STEVE RIVET
CARL BEATTY
JIM MILUCKY
WAYNE ABARE
DICK KORN
MARISA ACQUAVIVA
BONILYN WILBANKS
KARL BOHNE
DEBBY FRANKLIN

TOWN ADMINISTRATOR:
TOWN ATTORNEY:
TOWN CLERK/TREASURER:

For the record Fire Chief Christopher Robinson was also present.

C, ADDITIONS/DELETIONS/CHANGES: Jim to remove the budget adjustment Reso 14-2014 from consent agenda. He also asked the Atty to stay for the discussion on Board Procedures. Marisa also wanted him to stay for that issue. Chair said it will be moved up before presentations. No objections.

D. CONSENT AGENDA:

(Any Council Member may request an item on the Consent Agenda to be removed and placed on regular agenda immediately after new business to be discussed and voted on separately by the Town Council)

1a. Approval of Minutes
Exhibit:

Regular Town Council Minutes – 5/05/2014
Agenda Report No. 1a

1b. Budget Adjustment (Reso 14-2014) REMOVED FROM CONSENT AGENDA

Discussion: Corrections to minutes – Jim pg 4; (Add no 2nd) pg 5, 1/10 not 1 mil.

MOTION: Jim / Marisa to approve Consent Agenda (minutes only / as corrected.)

VOTE: All Ayes.

Taken next:

1b. Budget Adjustment (Reso 14-2014) A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2013-2014; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 1b.

Recommendation:

Request Approval of all with a roll call vote.

Chair read reso by title only.

MOTION: Wayne / Dick: to approve Reso 14-2014. Dick said this just formalizes what they agreed to do at last meeting. Yes. Jim understands this is for the additional FF pay only – not the truck. Yes.

Dick asked about difference regarding Budget “adjustment” vs. “amendment.” Franklin explained Budget *Adjustments* are done by resolution to change the money allotted to certain line items within the approved budget but do NOT increase or decrease the bottom line. An “*Amendment*” to

the budget must be done by ordinance and increases or decreases revenue and the corresponding expenditure and DOES change the bottom line of the budget.

ROLL CALL VOTE: 1)Milucky, Aye; Abare, Aye; Rivet, Aye; Korn, Aye; Acquaviva, Aye. Reso to adjust budget is approved 5 - 0.

E. PUBLIC COMMENTS: Comments may not address subsequent Agenda Items. Comments do not require Council response. (Speaker Card Required) **Five (5) Minute Limit per Speaker**

F. ATTORNEY REPORT – Compassionate Marijuana bill is approved. It will allow only five (5) production and dispensing locations in the State – one in central Florida and each must be able to cultivate 400,000 plants annually and post a 5 million dollar bond. If this is true, then we don't have much to worry about. GV is looking at some possible regulations. Attorney referenced a Supreme Court case in CA – City of Riverside declared them to be nuisances and banned them; Supreme Court ruled in favor of the city. Ordinances could be used to regulate.

Marisa said she sees the bills when she is here to sign the checks. She saw the Attorney bill and we are spending money on Attorney for this already without direction from Council. She feels a little uncomfortable with this. Atty said we could plagiarize from GV if they decide to do something. There may be a preemption issue; meaning if we have it in place before it is approved by voters. Dick agrees with what Marisa is saying to a point but said Council needs to know what is going on. They need to be prepared. Wayne asked if they took action before the law went into effect would it be valid. Atty said only 5 areas will be allowed in State – we don't need to have anything in place at this time. Atty said this will be a very well regulated operation.

Marisa asked Attorney if he was going to attend the oral presentations by the solid waste vendors on May 27. Atty said he would not; he would be at meeting in Palm Shores. Marisa asked if they should have a lawyer there. Shouldn't be necessary. Council should have already done their scoring on the written package. Council may make changes to their scoring after the oral presentations. Then they will be ranked at the next meeting. Dick said we should have no communication with either company. That is correct. It will be a closed meeting with each company presenting separately. No public.

G. BREVARD COUNTY SHERIFF'S OFFICE REPORT – Dep Mike Bernard: He said the good news was there had been no big crime. There was a vehicle burglary on May 6 at Berry Patch. It was unlocked. Dep. asked if Council had any complaints. Dep said with summer time coming, kids may do *car hopping* – they try car doors and if they are open they will get stolen. Tell your residents. Dick sees BCSO on Weber. Wayne said they adopted the golf cart ordinance and did he know? If they see a resident without a sticker remind them to come here and get one. TA asked if they could get an electronic speed sign on Briar Creek Blvd. He will pass it on.

H. MALABAR FIRE CHIEF: He will speak as needed

PUBLIC HEARING:

I. PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING

J. ACTION ITEMS:

ORDINANCES: 1

2. Budget Amendment Ordinance 2014-06 – An ordinance of the Town of Malabar Brevard County Florida pertaining to a budget amendment in the fiscal year 2013/2014 to provide for additional revenues reallocated from surplus funds on deposit; to provide for the additional

expenditure for a new vehicle in the fire department; providing for repeal of ordinances or parts of ordinances in conflict herewith; and providing for an effective date.

Exhibit:

Agenda Report No. 2.

Recommendation:

Request Approval of First Reading

Chair read ordinance by title only.

MOTION: Wayne / Dick to approve Ordinance 2014-06 on 1st reading.

Discussion: Wayne asked if this was fleet purchase from County. No it is a State bid thru Sheriff's Office. Does it come with special warranty? Chief will check. Who would sell this – what dealer? Chief said each region has their specified dealer they have to go through. Wayne said if they call the local dealer and told them what the state price was could they negotiate? Mayor said the state bid has gone through the process. You can't call a local dealer without going out for bid yourself. Wayne said he didn't know. Steve said we could go through the RFP process. Dick said lets go with what we have. Steve said he recently did an Internet search for quotes on a car for his wife and they were very competitive.

Jim said Council approved the concept to purchase a new vehicle but now they have to approve the budget amendment. He has talked to other fire dept. persons and they don't agree with the need. In his opinion, the money for this is not critical. If Council feels this is what needs to happen, then move this discussion for expenditure of funds to the budget process. What they have now is horse and cart backwards. Roads, bridges, life safety issues. He won't support this.

Dick said they approved the purchase, not the concept, at the last meeting. What this is tonight is to just do what is necessary to move the money properly. Wayne said we have two vehicles that we are spending money on repairs and insurance; if we spend another 2K in repairs and insurance for the rest of the year, what are we gaining?

Mayor said it wasn't done in the best way it could have been. The existing vehicles that are marginal for use. He is for the new vehicle. Get one off the books, and retire the other. Neither of the current vehicles are serviceable for the their needs.

ROLL CALL VOTE: Milucky, Nay; 1)Abare, Aye; Steve Rivet, Nay; Dick Korn, Aye; Marisa Acquaviva, Aye. Motion Approved 3 to 2.

RESOLUTIONS: 1

3. Adopt Mayoral Duties (Reso 10-2014)

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING AN OUTLINE OF MAYORAL DUTIES; SPECIFICALLY EXPRESSED IN THAT DOCUMENT; PROVIDING COUNCIL DIRECTION TO AUTHORIZE MAYOR TO SWEAR IN NEW BOARD MEMBERS AND RENEWING BOARD MEMBERS OR THE PRESIDING OFFICER IN MAYOR'S ABSENCE AT A REGULARLY SCHEDULED COUNCIL MEETING ONLY; CLARIFYING THAT THE COUNCIL CHAIR SIGNS ALL ORDINANCES AND RESOLUTIONS PER FLORIDA STATUTE 166.041 AS THE TOWN HAS NO OTHER PROCESS IN PLACE; PROVIDING DIRECTION TO TOWN STAFF THAT THE ONLY AUTHORITY OF THE MAYOR IS THAT WHICH IS GIVEN BY TOWN COUNCIL; RECOGNIZING THE CHARTER LANGUAGE THAT THE MAYOR SHALL BE THE CEREMONIAL HEAD OF THE TOWN FOR SOCIAL INTERACTIONS WITH OTHER MUNICIPALITIES, STATE AGENCIES AND PROCLAMATIONS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 3

Recommendation:

Request Action

Chair read resolution by title only.

Speaker's Cards: None

MOTION: Dick / Wayne to approve Reso 10-2014; (later in meeting amended to add "or presiding officer in Mayor's absence.")

Discussion: Dick said he read this and he doesn't see anything here new. Mayor said he thought the Mayor swearing in Board Members was in the Charter. Franklin said the swearing in is new but has been discussed at earlier meetings. Jim would like the motion movers to consider a minor change. If Mayor is absent have the presiding officer perform the swearing in. No objections.

Rivet said that this hit on an important point; the Mayor is the titular head of the government; titular means in name or title only.

Mayor wanted to go through resolution. Mayor said the Charter states the Mayor signs all instruments.

Franklin said she only restated what is in the Charter. She asked Attorney to read that portion of Charter from Code book. Jim said you have to read the entire sentence. Chair said Council is not taking anything away from the Mayor. Steve said what about Florida Statute? Attorney clarified that the statute is clear that the presiding officer signs ordinances and resolutions. There is a provision for someone else to sign if there is evidence that there is an established policy in place prior to the statute. There is no evidence of that.

TA said Mayor Tom told her he signed all the documents. Jim said it was because he was Chair – the presiding officer; not because he was Mayor.

Wayne said the Mayor seems to think we are trying to marginalize his job and that bothers him. If there are little things that can be clarified or changed and the Mayor can feel better about them, I'd like to address them. If it means delaying this he has no problem with that. Wayne asked the Mayor would instead of criticizing the resolution generically, if he would red-line it with his suggestions. I don't want to marginalize your job. If you think we are, then I think it needs a second look. Maybe I'm wrong and no one else feels that way

Acquaviva: I have been on the record many times about this and I'm going to say it again. I don't believe that comment; I don't believe anybody has marginalized anything about the Mayor's position in this Town. I think that you were a Councilman, you ran to be Mayor; you've been the Mayor before. It is a strong Council form of government. That doesn't undermine our Mayor. I'm proud of the Mayor and what he goes and does; he's a very busy man. I don't see where this is getting down to giving the Mayor more power because he feels marginalized. That's almost absurd to me; that we feel that we've marginalized our Mayor. I can't even say anything more about that and if you feel that way Carl, that is awful because you have a very prestigious job in this town and you are the Mayor and you, I listen to you just as much as I listen to everybody on this dais. It is our charter; that it is a strong Council form of government. You have been on Council and you have been the Mayor. I do not feel like we need to rewrite our Charter to make somebody not feel marginalized. It is a very good position to be Mayor of this Town and I would be proud to be that.

Korn: One thing that we've got to consider that we need to be sure that we are talking about the office of Mayor and not any individual that may be occupying this office. This, what we do tonight will last longer than I will probably live or any of us or at least be involved. We need to focus on the office of Mayor, not any one person. With the way the discussion has gone, he wants to be sure that we are not taking anything away from the office of the Mayor or adding something to it because of personalities that shouldn't be there. There are specific duties that we can appoint to

the Mayor as they come up. We can decide tonight at this meeting that there is something that is happening next week and assign it to him.

Acquaviva: Just to add - we are elected by the people. You were elected for that job; I was elected for this job. It's not just about what I think or you think. It's about what we are called to do by the people who put us here and by our Charter so I think we are very fair and I think you are elected to do that job of Mayor and it has been written and said what it is. I don't get the problems with dissecting our charter to the point where we want to make it be what we think it is or what the verb is; we know what it is. So that's all I have to say.

Abare: Apparently, I'm not talking about Carl as a person, he's holding that job and he knows more about that job than I do, but Carl seems to think that we are doing more than just clarifying what's been going on for eons and writing it down. Is that true, Carl?

Mayor: yes

Abare: then those things need to be discussed a little more. No discredit to Debby; she's thorough and has a basis for everything she does. But there may be some gray areas and he would like to discuss that a little more. He asked Carl which item do you think we're taking away from the Mayor's position.

Mayor: Well there's verbiage in there that I don't know where it came from. Like, he said, "suggest proclamations"; well that wasn't the case before. The Mayor picked up proclamations and we went on. So now it's being changed to suggest.

Korn: Mayor isn't the only one who can suggest a proclamation

Acquaviva: We all can

Korn: I think anybody can suggest a proclamation. The one thing that I see that's not here from when I came on as a board member 15 years ago ~~was that Mayor was required~~; the nominations were suggested by the Mayor for board members. Somewhere that's gotten lost in the shuffle. I don't know if that is something that is a duty of the Mayor or not, but at one time, all board nominations that came before Council were made by the Mayor.

Mayor: that was before the charter because I came on board and when we passed the charter at that time, the charter's adjusted so you can't tweak on that, but when I first started as Mayor the first time, I had to....

Korn: I'm not that old

Mayor: but that's how it was done

Korn: I'm talking about 12-15 years ago

Mayor: the Mayor made the recommendation and the Council voted on all the board members. I straightened out P&Z because that wasn't right; you know the staggering terms, he put all that in and then it drifted off after that. But that's how it started and then the charter got changed because there were two statements in the original charter.

Rivet: well, the point is what the charter is now, it doesn't matter what it was.

Mayor: that's true

Franklin: I believe we passed an ordinance that made that and it has since been superseded.

Abare: if we gave you another session, could you, with the stroke of a red pen, could you make a few things you'd like to see?

Mayor: I could actually write out my objections and then you could just trash them all; shred them, I don't care

Abare: I would rather get some red lines with words you don't like and suggestions for additions. If you can zero in and focus on those one or two, three or four items.

Acquaviva: I had my hand up before that. I just have a question for you Carl, while we're up here. I know that you ran for Mayor and I know the things you do. Do you feel that you don't have the power you should?

Mayor: I knew I had to live with the charter and I was here when it was first passed and then I watched it being changed; there is a difference on appointments on stuff like that; I can recognize all that. Then this document has verbiage that, feels like it to me, that it's shifted.

Acquaviva: You want us to change the charter to back to what it was?

Mayor: this is a resolution which is not even law which is going in and tweaking the duties from what's in the charter.

Acquaviva: but when you ran for Mayor, this is what it was, correct? When you ran for Mayor, this was the charter in place?

Mayor: right, there has to be a charter

Acquaviva: and this was the job you wanted?

Mayor: well, yes

Acquaviva: yes, okay; that answers my questions

Korn: as I hear you Carl, you used the word verbiage, you like ~~some of these things but maybe not the bottom line but not how it is worded. but how you get to the wordage here changed.~~ May I suggest a motion that we table this until the next meeting; give the Mayor the opportunity to give his version of what this says

Mayor: it will be the shortest version; I'll just go through and cross through

MOTION: Dick / Wayne to table. Ayes 2; Nays; 3 (Marisa, Steve, Jim) Motion Fails.

Jim has one observation. The only thing that is being discussed to change is the signatory. It is the intent of the Charter and has been the practice to have presiding officer be the signor. When the Mayor was the Chair it was not an issue. That is the issue.

Mayor objected to the wording in resolution "Providing that the only authority the Mayor has is delegated by Council".

Jim read duties – civil duties and military law, "as the council shall direct" That is what that says. Direct anything else. Council can direct him to any other thing

ROLL CALL VOTE: Milucky, Aye; Abare, Nay; 1)Rivet, Aye; Korn, Aye; Acquaviva, Aye. Motion approved 4 to 1 (Abare).

Rivet: there's a motion to table; there is no discussion on a motion to table, is there a second?

MISCELLANEOUS:

4. Method for Mayoral Veto Process (will be Ord)

Discussion: Atty said the charter does not provide for the timing of the veto.

Wayne said he is not and we are not taking this away from Mayor.

Marisa said that is the problem – she never heard what he was unhappy about the ordinance. Why didn't he speak up before it was vetoed? Dick said talk about process. He would move that a veto must be submitted within 30 days. Jim struggled with the concept of days because the Council can change the meeting day or dates. He agrees with Korn. Mayor can only veto what Council has approved so it has to be after the 2nd reading. Regarding discussing the opinion of why he is vetoing should not be required. Marisa said we are the only town to provide mayoral veto. Maybe it should be a referendum question to the residents. Dick said he likes the veto provisions

MOTION: Dick / no 2nd not necessary shall have the authority to veto ordinances by council no later than the 2nd regular meeting after the final approval of the ordinance. Marisa suggested 30 days. Mayor said what he was using was Gov or President. If you put down 10 days that does not give him much time. It also included the rationale and Council had to consider.

Wayne asked Atty. 30 days may be a hardship to people relying on that. sb within 5 business days. Council can also adopt emergency ord and Mayor should have to veto sooner.

2nd blank. Wayne said on draft it should be done at same meeting for emergency ord.

Jim said they could have had two that could have been emergencies.

Well blew up and amendment was need for well. Mayor needs to say yes or no at that meeting for emergency ord.

Written for regular and verbal and with written within a certain # of days.

We authorized

Discussion: Consensus to put in Ord form for next meeting.

5. Council Review of TA and Contract

Portion of RTCM Minutes of 5/19/14 Regarding TA Contract/Review:

Abare stated that when he was first elected to Council, he was assigned to be the check reviewer. That put him in Town Hall several times a month. He no longer does this. He was around the employees in their normal day to day activities. In July of 2013, he sensed a problem; there were a couple of employees on the verge of resigning. He got involved and the problem centered around Bonnie. He interviewed eight people, he interviewed former Fire Chiefs, former Council Members and he took notes; they are private notes and he will not share with anyone. They are for his private use only as he told the people interviewed the comments made were in confidence and would not be made public. He then came up with a list of suggestions; he spoke to Bonnie and made it clear that she doesn't work for him, she works for us collectively. She asked what the suggestions but he could not direct her to do these things. The suggestions were provided to her and he has a copy of the suggestions. Rivet asked if she had seen them. Wilbanks stated yes.

Just before Council goes over the suggestions, he additionally spoke to six of the staff members and asked for their inputs on the evaluations on Bonnie and Debby. He just calls them A through F. Some people responded to every input and some skipped them and I put them together and provided a copy for you. If you look at the second sheet, you'll see under work habits and under supervisor capabilities, some comments and he fully understands that there is always someone who doesn't like you no matter what you do. So he wasn't looking for one person who didn't like somebody. He was looking for 3 to 4 people telling me the same thing. Consist with these comments that are fairly fresh. The suggestions he made are the suggestions he handed out: Be happy and smile more; don't be gruff and condescending with your subordinates; don't berate employees in front of others, hold private meeting if required; don't take credit that were done by others; by a team, give them credit; don't micro-manage and try to run everything, let your employees do their job. He saw some of the common themes so Bonnie, God love her, she made changes and he thinks that this problem has been fixed. The reason he is bringing this up is the way you are supposed to this is to give people evaluations and tell them what they are doing right and what they are doing wrong and in this case, this case, if these things hadn't been fixed, this is not an acceptable; this is a severe handicap to her position and we would have to take further action. But she has fixed these things and there is a place for her to sign this; it should go in her personnel folder and what this allows Council to do is; this is uncomfortable for him, but in six months from now if these things aren't fixed, we as a body have alerted her that there is a problem and then we will take other action. He doesn't think this is the case but he is following procedure. The only other comment is that he would like for her to apply for more grants for the Town, she has already taken the initiative to do that. He's sorry that this can't be done in private.

Rivet stated that this is the nature of the beast and this has to be done in public. But that does not stop any of us from having these discussions in private. Rivet stated that there is no prohibition is stating the progress if it is good or not so good. Anyone can say that this was done as a good job or something wasn't done as a good job. Abare stated that another thing that he's done is to mention to a couple of the employees that if a situation comes up and they want to pull him in as a

Council Member, he will listen and he will not direct the outcome of the meeting but he will come and listen if it is okay with Council. Rivet stated that if it is a situation that would benefit from his attention that would certainly be within his right.

Acquaviva stated that she would like to say about this process, she really applaud everyone; this is very hard and we haven't been doing our job to do this for Debby and Bonnie and we are called to do that. She knew what we should be doing; it's not easy to do but it is so important so that you have feedback and we know where everybody stands. She thought we were; everyone took this very seriously and she doesn't think anyone was unfair. She appreciated the process and hopes that everyone else did as well. She thinks, if not, for anything, to document so you know where you stand; that it wasn't a he said/she said type of thing. This is very important, not just this Council but for every year these need to be done. She applauds that and she thinks everyone was very fair.

Korn stated that he was aware of the situation last summer even though he was not on Council at the time. He thought the Council did the right thing and appointed the right person to go about the investigation; he is impressed with Abare. One of the really hard things we've got to face here right now is this Council, whoever sat on here, and Bonnie has basically functioned without formal supervision for six or seven years and for us to; there have been a lot of complaints. He's had some of them; he's sure most of Council has. And the people sitting up here have heard from a lot of people. But at the same time, you can say we have to make a change and we have to do this and that. We could look at other communities and see what they are doing; that wouldn't be very fair because we can't suddenly say we're going to do evaluating "by". We can't do that without putting in some input and offering some opportunity or some way that she knows or whoever sits in the position of what Council is thinking. This is a step in the right direction and we can't over react to it and he feels that Abare's guidance has been very good in that respect.

Acquaviva asked if she could respond. She has been on Council and she doesn't feel that Bonnie has been without direction; that's an unfair statement. We just haven't been formally doing the evaluations annually but we also were not provided the forms.

Bonnie stated that 2009 was actually the last time that there were formal ones done but they were not from everyone. There were only the ones that chose to turn them in. Acquaviva stated that she has come into Town Hall and talked to her about problems and what Wayne said is not true in that sense; there have been many discussions held regarding issues at town hall. To say that people are going unchecked down here is not the case either.

Rivet asked if Korn had any comments about the evaluation before going on to the contract. Korn stated he did not. The floor was given to Milucky. These are strictly his comments from his own personal experience. He didn't do any interviews so whatever he says is first hand. His focus is the contract and the budget and this would be in a constructive environment; he hopes that the Council hears. He does have a technical question to start out with. At one time, you had a homestead in Broward County; is that still true? Bonnie stated it is. Milucky asked if she has residence in Brevard County. She owns the property in Brevard County as well. Milucky asked if she is homesteaded in Broward and she answered yes. That's the technical question. He reads contracts all the time. So here is the, perception is everything, so this may be correct and it may be not correct. But if it is a perception problem, and not a fact problem, then his suggestion is to fix the perception; fair enough? She said yes. If it's a fact problem and Council agrees that it's a problem, then to fix the fact; deal? He actually looked into some of the TA's background and she is well educated and bright and brings a lot to the table. Bonnie thanked him. Milucky stated that not everybody has done that on this Council. He was surprised and pleased; remember what he does.

His perception is that the TA attends many meetings outside of City Hall on behalf of the Town of Malabar. He doesn't know how many that is; when you are there, you are not here. Some of the issues, he's not saying they are, but they might be due to the fact that you are elsewhere. He's gotten into a judgment place where he can identify that being on that committee does or doesn't provide benefit to the Town in an indirect way but he knows if she is not here to supervise, manage, to oversee, to write grants and do all those other things outside the personality issues; so he would say his requirements for the TA would be to start here and watch the store. That's, again, he's 1/5, as Abare would say, but he thinks that charity begins at home and whatever begins at home; so if you do that, then it's a perception problem and you need to do a better job of explaining to Council or not, this is what I'm doing, this is what I see and these are the routes I've done and these are all the things that are going on in Town. It's a feedback loop and maybe you're just not giving us the feedback. The feedback we've heard is what's going on out there and that's not bad but it needs to be balanced with what's going on here.

Now, in the contract, we agree to paying for traveling expenses, believe it or not, for outside of Brevard County so that you can do some stuff. Other than when we do the budget, the Council didn't authorize any meeting and things; he just points this out for Council. The last contract was done in 2007. It kind of gets renewed every year without anyone saying anything. This all started when he said this isn't right. So Council can get rid of this contract anytime by stroking a check for three months and paying some stuff. So if you don't like the contract, the contract can be broken at any time unilaterally by stroking a check if Council chooses to. You don't even have to have a reason; you just have to say the contract is being terminated. The attorney, he will point out, that he is shaking his head that says he agrees with Milucky's understanding of the contract if anybody disagrees. The Town has agreed to pay for; to budget and pay for educational courses that are required. Again, and that's professional development, that does us good. It doesn't include going to all the meetings.

The Malabar code, #8, in your job description; the TA's job description, it states that you will keep the Council fully advised of the financial condition, the future needs of the Town, make recommendations concerning the affairs of the Town. If he has one single critique, he would say that you probably have the most solid Council that you've had in a long time for support of what is going on in the Town; the most interested and is really from a Council standpoint, something to be grabbed and used but you have to tell the Council. You're driving around the Town; the feedback is this is what's coming. He hates to use the example of today, but the vehicles just didn't fall apart yesterday. Okay, it's possible but not probable. So the request would be, with the intimate knowledge, we aren't here looking at the day to day but the TA is and that's the feedback that he's talking about, whether it's a truck, a uniform or an air bottle (SCBA). He's just using those as example; it's the perception that whether the building, or other the TA should be coming to Council; this is what's going on. The TA might feel like you're doing that, he doesn't think you are.

He could be wrong; remember what he said; perception versus fact. Wilbanks stated that it's feedback that she's getting that will help her. Milucky stated he's 1/5 so she's got to decide how she's to spend your 20 percent of the time. He appreciates that. So that's kind of the crux, it's the feedback loop and on a regular basis and it's hard and if you are, if you took out one 4 to 6 hour meeting out of your schedule and you wrote one grant, you would make this Councilman happy and you would probably take care of something on another Councilman's agenda that they felt so strongly about that they wrote it on a list and passed it around. What he's saying is we can't fix the last 7 years and he's not going to try; they can beat you up for it but that's not going to help Malabar. What will help Malabar is if you come to us and say I've got a way to fix the brush truck; I've got a way to advance the road down; pick one of how many roads we have. Come up with a plan that says we can do this. We have a beautiful resource down the Indian River; the last time the Pepper trees got busted was under another administration. He's not saying the prior

administration was great, but this administration can be great. Get the equipment out here and bust the Peppers. So that's something; talk about something visible, everybody loves going up and down US 1 and for those businesses that might benefit from that; that's another example. Instead of reacting to the whining, complaining and ducking to the defense moves, which consume a phenomenal amount of energy, what he's saying is taking that approach in this is what she's doing for the Town that she really wants to be a part of. Michael Crotty made it 27 years in Satellite Beach; not all that time was happy. Longevity can happen as a manager in towns/cities in the same place with divergent goals and restrictions. Our goal is to do good things for the citizens. Your goal should be to do good things for the citizens. That's what he thinks Council is asking. He has no more. Wilbanks asked if Council would like a list of the meetings she attends. The meetings she attends are the meetings she was assigned to for representation. The TAC meeting she attends is because we need to have a say for some of the things for the Town's infrastructure for the TPO. Milucky stated he wants her to respond but not at this meeting. He suggested to put that on the agenda and come back to Council and say this is what a day is for me because he just heard the word assigned; he doesn't recall Council assigning you, we pay your check twice a month and I don't recall this Council to any committee; maybe a prior Council did but not this Council. He would like to have the dialogue for the entire Council to know what meetings you attend so that during the 8:30 to 4:30 work day, they know what committees she is one and the time requirements that how some of your time constraints are and Council can help relieve some of those. Or Council can make an informed decision that it is good for us. They need to know what each meeting is and does and how that helps Malabar and not just makes you a more rounded person but how it helps us. He would suggest doing this outside this meeting. He doesn't want to get into that defense mode; that is not what this is for but it's to give you an idea of how to fine-tune this.

Acquaviva made a quick remark. She appreciates everyone's work again; she agrees with Milucky and would reiterate that too. Sometimes she feels that as a resident and as a Council person, she feels like she has to come up with things. We are asking the Town staff to do this and sometimes it would be nice to say that this is going on down here. It's not for us to figure out sometimes, we get all the constituents asking the questions and we bring them down here but she agrees with Milucky because you do have the expertise to say what would work and what wouldn't and come to us more in that way and not so much the inundating things. That would be her suggestion.

Korn stated that coming on to Council last fall; even though he had sat in the audience for several years, it is different when sitting up here as Council. Wilbanks will tell Council that he came to her the first several times a week with questions which were accurately and thoroughly answered. If he's asked a question, it's been answered. His website has generated questions and they have been answered. He would call here; he gets answers from each staff. He used the Fern Creek Crossing Park as an example. The TA hung with this and got the information as we didn't know what was going on out there. That's the good side; the bad side is; he went back to the interviews before she was employed with the Town. In your interview, you stated that one of the strong things is the grant writing. But have we received any grant money based on any initiative or yours? He doesn't think so; the funds for the fire house were under the result of work done by Dan Welton. Wilbanks stated that the grants dried up when the economy went south. He asked where her initiative is with bringing money into the Town. He's asked her about this when he was on Parks & Rec. The response he got was there isn't any money available. Yet he goes to St. John's County and they are getting all kinds of money. He's been to other places and has gotten the same answers with the monies being available. There are things we can do; the last major grant that has come to this Town was 12 years ago when we got the playground equipment at the main park. There are several things that could be done. He's not one to say that there's no money; yes there is, find it. We agreed a few months ago to pay \$480 for some money finder. He asked if anything had come of that. Wilbanks stated that yes actually specializing out our area, our problem is our

population, the monies... Korn stated that he's not interested in the population; is there any monies coming from that and that may sound cruel but he doesn't like excuses and he can't say that any stronger. We need to get on with; he remembers when Bill Hall was hired and one of the main reasons, along with taking some of the funds away from the attorney, was to find grant money for the Town. He wasn't involved with the Town at the time to know if either one of those things were accomplished. He has his opinion but it's not fact. We need to not find reasons for something not to happen but to make reasons for them to happen. He thinks you can do that. When she was hired, he spoke to his brother when she was City Manager at Oakland Park as he knew you from Broward County Sheriff's Office. He was told that if she survived 4 years at Oakland Park, she has to be okay. Korn stated that you have the ability; just do it.

Milucky has a proposal. He would like for this Council to revisit within 6 months, but we really don't have 6 months, for the Council to revisit the contract with the TA September 1st or the first meeting in September to discuss whether we are on the same track or on a different track. Since the last the contract we have with the TA is dated April 7, 2007, he would like to see a new contract. Even if we have one dated 2010, he would still like to see a new contract and he would like to see this Council take a proactive approach of saying you have; remember, we can cancel this at any time or not and he's not saying that's what we should, he's just reminding Council that we have the option to do so. His proposal is to revisit where we were and where we are at the first meeting in September and to proactively review the contract and signing a new contract with the TA. That is his proposal for Council to consider action.

Abare stated that the Fire Chief got a grant and he hasn't been he hasn't been here that long; Wilbanks needs to get some grants, he thinks she's heard that here tonight. This is an open-ended contract; it doesn't have a termination date. You can't just willy nilly change it unless Wilbanks wants to change it herself. If you terminate it, you write a check. If you terminate her you write a check; you can't go tweaking this contract. Rivet stated you can by mutual consent. Abare stated it takes mutual consent. It takes two to tango. But Wilbanks has the right to say that nothing will be changed; she has that right. Milucky stated that he agrees. Rivet stated that is not correct.

Rivet stated there is about 45 minutes left in the regularly scheduled meeting. Are there any new points that need to be discussed for the review or Wilbanks is there anything you would like to address? Wilbanks stated that she hears what Council wants and is asking for and she thinks it's attainable. She doesn't know what else she can say; good issues were brought up and points and she can only give explanations. The grant money dried up in 2008 when the economy dried up; you can go to the meetings and hear it. When you say we're not concerned about population, they are funded for the larger cities. Palm Bay got a lot of them because they have over 100,000 people. We don't qualify for a lot of them. We don't qualify for CDBG grants, so those are things she knows because we don't have what they call a blight area. In spite of that, I will go and find the funds. She has already gone through one training session and he wants to isolate more so that we aren't just spinning our wheels looking at all of them. She thinks it's attainable; she will bring a list to Council and they can decide if it's beneficial for her to attend the meetings. It's the most she can do; it's the first time she's heard it. Don't shoot her for not knowing how to read their minds, but she didn't. She appreciates Council's candidness; she appreciates that all 5 Council took the time; actually 6 of you, took the time to put in the information on the performance evaluations so that she could set some goals. She thanked them for being candid and was not mean. She felt they did, constructively, what was set out to do with the evaluations.

Korn asked about the grant the T&G Committee applied for. Wilbanks stated that it is still out and we have not gotten any word on it as of yet. She feels that we should hear something soon.

Acquaviva stated that she is in agreement with Milucky about September; there were some issues to work on and to have that goal of September is good. Korn stated that it's only three months. Acquaviva stated that there could be some changes in that time. Milucky asked that this be put on the agenda for the first meeting in September so that it's not lost. It was brought up that the first meeting is cancelled; Franklin stated we always have two meetings in September because of the adoption of the new budget. It will be placed on the agenda for the first meeting in September. Korn asked if this was being tied to the budget. Milucky stated it was not. Consensus to revisit this item at the 1st meeting in September.

6. Council Review of Clerk/Treasurer

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Discussion: Marisa said it is interesting to read everyone's comments, areas to work on. Since she has been here; anytime she has had a problem or question Debby has responded in a timely fashion.

Wayne – Debby does a terrific job. She takes ownership of her job; probably to excess.

Dick said one criticism – it is getting the agendas out in a timely fashion. Franklin will accept the challenge. Dick says she takes on more than her job description. At same time, you have had to go back and redo things to make them right. Monday was the first time she got packet out so early. Franklin said it was wrong also. She knows her job. Concentrate on accuracy and schedule and not finding more work to do.

Jim said Wednesday packet delivery is not a help to him to prepare. He goes over the agenda with her on Monday. He has one caution – seeing a lot of the background. When they start throwing things between Boards and citizens and council – duck. He has one event in mind. The natural tendency is to defend the council but it is a struggle to keep the aura of neutrality.

Wayne to TA and Clerk credit – he sees them come up to each other and they have a good give and take that works.

K. PRESENTATION:

L. PROCLAMATION:

M. STAFF REPORTS: Held until after Discussion Item since Attorney was still present.

O. DISCUSSION ITEMS:

7. Board Procedures – Draft Ordinance (reviewed by Atty)

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, RELATING TO BOARDS AND COMMITTEES; AMENDING CHAPTER 2, ARTICLE VIII OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING DIVISION 1 BY CREATING SECTION 2-211 GENERAL PROCEDURES FOR APPOINTING MEMBERS TO BOARDS AND COMMITTEES; CREATING SECTION 2-212 OPEN MEETINGS, PUBLIC COMMENT AND AGENDAS; CREATING SECTION 2-213 RELATING TO AD HOC COMMITTEES; CREATING SECTION 2-214 RELATING TO PUBLIC MONIES; CREATING SECTION 2-215 RELATING TO STAFF SUPPORT FOR BOARDS AND COMMITTEES; AMENDING DIVISION 2, SECTION 2-221 RELATING TO THE PARKS AND RECREATION BOARD; PROVIDING FOR ITS ESTABLISHMENT AND PURPOSE; PROVIDING FOR ALTERNATE MEMBER DUTIES; CREATING DIVISION 3 SECTION 2-228; CREATING THE TRAILS AND GREENWAYS COMMITTEE; PROVIDING FOR THE ESTABLISHMENT, COMPOSITION AND TERMS OF THE TRAILS AND GREENWAYS COMMITTEE; PROVIDING FOR DUTIES; CREATING DIVISION 4 SECTION 2-230; RELATING TO THE BOARD OF ADJUSTMENT; PROVIDING FOR THE ESTABLISHMENT, COMPOSITION AND TERMS OF THE BOARD OF ADJUSTMENTS; CREATING DIVISION 5 SECTION 2-240; RELATING TO THE PLANNING AND ZONING BOARD; PROVIDING FOR THE ESTABLISHMENT,

COMPOSITION AND TERMS OF THE PLANNING AND ZONING BOARD; AMENDING ARTICLE XII OF THE MALABAR LAND DEVELOPMENT CODE; DELETING SECTION 1-12.2, AND SECTION 1-12.3; AMENDING SECTION 1-12.3.C.4 RELATING TO DECISIONS OF THE PLANNING AND ZONING BOARD; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

Discussion: pg 2 of ord add (or presiding officer)

Last para absences – excused or not relevant.

Pg 7 remove the last line.

Pg 2 1st para - Delete “including the ranking of any alternates.”

Dick has a problem with a certain number of absences. He said story about Bob Seigmann. He was put back on as an alternative.

Then he gave example of BOA alt Bill Arnaukas who travels a lot.

Wayne asked what his recommendation was. Dick said let the Board decide if there is a problem.

Wayne said make the change. Dick said remove that language.

Marisa disagrees. We need people attending the meetings. Maybe they wouldn't miss as many.

Wayne likes the 25% and maybe strike the alternate from that requirement. Marisa does not agree. Jim said if the alternate can't attend and be kept up to date, do you really want that person voting in absence of a regular member?

Chair said what about a regular member voting that doesn't know the history of the issue due to absence in excess of 25%?

Marisa said she missed the last meeting. Dick said that is a perfect example. Marisa said she has read the entire package. She can't imagine having to read three packages to get up to speed before a meeting.

Dick said there have been many times he has read the packet in his RV while at a show out of the area.

Marisa said 25% is 3 meetings out of 12 meetings or 6 meetings out of 24 meetings. Dick asked why she was out last meeting. She said her daughter graduated college. Dick said she proves his point. Marisa said no it doesn't – she has an excellent record of attendance. Dick said he has not missed a meeting since being on Council. She calls Dick out on a below the belt comment. Her daughter graduated from college with a Doctorate of Pharmacy. That is not an everyday happening.

Dick is in favor of “subject to” decision of Council. Marisa disagreed. He is against “subject to” – you are forgetting the people that are trying to get something done before a board. Jim said those that have been through the appointment process know the “subject to” and the reappointment time don't work; this is an empirical impartial method. Jim said you do a disservice to the folks that come before a board if the members don't show up 75% of time. You are trying to protect the Board members and are forgetting the people trying to get something done in front of a Board.

Marisa to think you will want to allow more than 25% of absences but call her out for two misses for the year; she finds that astonishing. Council Members are elected by the residents. If they knew that members weren't bothering to show up for meetings, she is certain the residents would not vote for them again. It is their job as elected officials to appoint the Board Members to serve the community and she thinks Dick is holding her to a higher accountability and she finds that so unbalanced. Dick said he has missed three meetings in 12 years on the Park Board. Marisa said but he is willing to accept more than 25% absences from other board members.

Chair asked for consensus to keep as written. Council consensus to leave at 25%.

Chair announced it was 10:15PM – Council needs to prioritize. Chair said the only remaining items are staff and Council reports.
Attorney is released to leave.

ADMINISTRATOR: Reminded Council and Mayor to get their bid proposal packages from Clerk before they left building tonight. TA reaffirmed that they should not share the scoring with their residents. Dick asked about how the solid waste is paid on the tax bill and also asked about the solid waste franchise fee. Go see staff. She also asked if all Council Members are receiving the FYI? Yes.

CLERK: In the interest of time, she will send out memo.

O. REPORTS – MAYOR AND COUNCIL MEMBERS

- 2) Wayne, action list – newsletter? In layout and will be to residents next week.
- 6) Steve, nothing
- 2) Marisa, nothing
- 4) Mayor, symposium down in Sunrise. It was interesting. 2 things happened. It had to do with disasters. Mayor from an island in NJ and he spoke about the issues he had to deal with. The best one was a Mr. Whit (didn't remember first name) but was FEMA Director under Clinton. He talked about all the things he had done when he got in and changed things and getting things done and spoke on all the disasters he'd been to in his life as he was also a consultant. He gave example of program to give money to people to harden their home and one couple wanted to use the money for a hot tub.
- 3) Jim, Memorial Day on May 26 at 10AM – concert of community band and he is playing trumpet at liberty bell museum.
- 1) Dick, nothing else.

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

Q. ANNOUNCEMENTS:

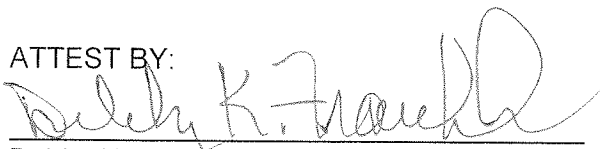
- One (1) vacancy on the Planning & Zoning Board
- One (1) vacancy on the Board of Adjustment
- Three (3) vacancies on the Park and Recreation Board
- One (1) vacancy on the Trails & Greenways Committee

R. ADJOURNMENT:


There being no further business to discuss, Chair asked for a motion.

MOTION: Jim / Dick to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:30 PM.

ATTEST BY:


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

BY:


Steve Rivet, Council Chair

Date Approved: 6/2/2014 as corrected

(seal)