

MALABAR TOWN COUNCIL REGULAR MEETING

April 1, 2013

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 Wayne Abare, District 2.

B. ROLL CALL:

COUNCIL CHAIR

VICE-CHAIR/MAYOR:

COUNCIL MEMBERS:

STEVE RIVET

CARL BEATTY

JIM MILUCKY

WAYNE ABARE

JEFF MCKNIGHT

MARISA ACQUAVIVA, excused

BONILYN WILBANKS

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

KARL BOHNE

DEBBY FRANKLIN

For record, Franklin stated that Fire Chief Bob Strandell was not feeling well. His report was sent to Council and Franklin will go over it if Council directs. Chief said Council could stop by Fire Department or call him if they wanted to ask any questions.

C. ADDITIONS/DELETIONS/CHANGES:

Chair stated FD promotions will be moved to next meeting. Jeff asked to move the auditor's report to the front of the meeting to let them get back to Orlando. Chair asked if there was consensus to move it before the public comments. Jim objects and stated there were many members of the public here to speak. Vote to move auditor's report to in front of public comments: Aye: 2 (McKnight, Abare); Nay: 2 (Milucky, Rivet). Tie vote. Mayor voted Aye. It will be moved to before Agenda Item E. Chair said that CM Marisa has again asked to delay discussion on Mayor being Chair to another meeting. She has had a family emergency and wants to be a part of that discussion. No objections. Mayor asked about the delay in the appointment of Dick Korn to P&Z Board and asked if it could be done. Chair said there were some allegations on issues involving the P&Z Board and some Council Members and Chair said they should resolve that before they handle more appointments.

CM Jim asked to move "1e" off of consent agenda so they can talk about it and they could get a little more information. Wayne said they have already had a motion and voted on that. TA said it was an error on our (staff's) part. We had the resolution but did not include it in the package. It was not available at last meeting. She asked Council at that meeting if they could put it on the Consent Agenda at this meeting. The action has taken place. Chair stated that CM Jim had asked to have it taken off and discussed separately. CM Wayne requested we don't remove it. Chair said any member can ask for an item to be removed from consent agenda and considered separately. It will be placed under J. Action – Resolutions as first item. Wayne asked Franklin to read the portion of the resolution in 1e. under "purpose". Chair approved. CM Jim stated he requested it be removed from the consent agenda so it can be discussed separately. Wayne asked that she just read that one section. Jim called point of order. Franklin can read it later. Franklin was directed to read portion of resolution regarding the purpose of the resolution Franklin read portion on the previous meeting's vote on Grant Ball's appointment. Chair directed that the remainder of the Consent Agenda be voted on and the resolution be considered as first item under J.

D. CONSENT AGENDA : To Be Approved as a Group with one Roll Call Vote on All Items if Resolution is included, otherwise a voice vote.

(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 Regular Town Council Meeting – 3/04/2013
Exhibit: Agenda Report No. 1a.

1b. Budget Adjustment (Reso 10-2013)
Exhibit: Agenda Report No. 1b.

Resolution was read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2012-2013; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

1c. Acknowledge Receipt of February Financials
Exhibit: Agenda Report No. 1c.

1d. Reso 8-2013 Renaming Malabar Portion of Goat Creek Lane

Resolution was read by title only.

A RESOLUTION OF THE TOWN OF MALABAR PROVIDING FOR THE ADOPTION OF GOAT CREEK LANE AS A NEW MALABAR PRIVATE STREET NAME; PROVIDING THE FORWARDING OF THIS INFORMATION TO BREVARD COUNTY ADDRESS ASSIGNMENT FOR E 9-1-1 EMERGENCY IDENTIFICATION PURPOSES; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 1d.

Recommendation: Request Action on all with one motion and a roll call vote

1e. was Moved to Agenda Item J. as the first Resolution to consider:

~~**1e. Reso 9-2013 Grant Ball to Regular Seat on P&Z Board**~~

Discussion: minutes, pg 7 of packet, under E, middle of first para, McKnight stated it would not be a problem sb Knight. Steve said para 6, and pg 3 of agenda packet and 2 other changes. McKnight sb Knight.

MOTION: Jeff / Wayne to approve the consent agenda items 1a through 1d with corrections to minutes.

VOTE: 1) Jim Milucky, Aye; Wayne Abare, Aye; Steve Rivet, Aye; Jeff McKnight, Aye; Marisa Acquaviva, excused.

Motion carried 4 to 0.

AUDITOR'S REPORT: (moved up from place on agenda per Council consensus)

Auditor Report of FY 2011/2012. Jim Warmus introduced himself and Randy Nunley the managing auditor that did the field work. Mr. Warmus went over pg 1, auditor report, unqualified report, highest form of report. Pg 2-7 is the mgnt dis and analysis, this is what the town clerk and TA recap what they did last year, and biggest thing is sold the water dept. He will explain more later. Pg 9 and 10, the financial statements, govt wide similar to business. Balance sheet looks very good so does statement of operations. The losses are shown in this perspective and they show depreciations. Pg 11 and 12 show the govt fund. The unrestricted. You had a very good year last year. Pg 13, the water fund shows has 0 everything was transferred to GF. Pg 14, the water fund for portion of year. Small loss of 30K, net income of 70K before sale. Pgs 16-29 are foot notes to the financial statements. Will go over if you have questions. Pg 30 is budget to actual. The revenues were 143K less than budgeted but your expenditures were also much lower so you made up for it. Pg 33, the independent auditors report. No comments on the internal controls. Pg 35 we

had 2 comments from 2011, one was rejected – that is fine to do that. Auditor said it is ok. The water dept was sold. The last 2 pages are required by the auditor general.

Steve asked about reduction in assets, pg 4, 55K – does that indicate any problem. Jim said you have 100K of depreciation so you would expect that variance to go down. Wayne said from last year if there was anything.

Mr. Warmus said they were saddened when they learned that the last Mayor had died. Warmus said he spent several hours going over audit report with Mayor Tom before it was released to Council. He was very thorough and Mr. Warmus appreciated it and this report continues with that transparency. Jeff said the report was nicely done. Last year we had comments and none this year.

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

- Dick Korn, 3115 Weber Road. Comes as a private individual. Recently the Park & Recreation Board suggested the Weber Rd 17 acre parcel be named after Mayor Tom Eschenberg. He would have brought this to their last meeting but the focus of the March meeting was the grant application so he is coming directly to Council.

The memory of Mayor Tom Eschenberg deserves more than naming a vacant 17 acre parcel meant for passive recreation after him. His memory should be recognized at a more visible location. He served many years as council member and then mayor. He created the Eagle Patrol. He worked hard for and with the Teen Council to prepare them for the future. He did this without fanfare and without looking for recognition.

He proposed something similar to what is done at Universities: naming the playing field as well as the stadium. He is suggesting naming the well used soccer field as the Tom Eschenberg Soccer Field at the Malabar Community Park and placing a plaque in a visible area of the park near the soccer field with information on Mayor Eschenberg's contributions to his community.

Jeff supports this. Steve would like it to go to Park & Recreation Board for their consideration. Wayne agreed. Clerk will send memo to Park and Recreation Board.

- Teresa Brownhill, read several letters of support of Leanne Saylors - from Debra Smith, Danny Massingil, Bill Santori, (attached)
- Speaker Chris Vassas, read letters from Palm Bay City Councilman Santiago, and Ruth Hanson
- Speaker Raffaella Vassas, read ltr from Health care promotions person, Debbie Koseski
- Speaker Dee Caddell read ltr from Karen Oates, Russell Shoal, and a letter from herself
- Speaker Cynthia Cintron read ltrs Andy Anderson ltr, Professional ltr from atty., Teresa Callahan, Denny Delavou, Sabrina Anderson, Jeffrey Goodman, ? Raully, and then he spoke as friend and landlord and is of high moral character and would recommend her for anything she would like to do.
- Charles Ryan, as an expansion on Dick Korn's idea, Town should create a Hall of Fame, could be collection of pictures on wall similar to Mayors and current council pictures. Also regarding to agenda item on possibly changing fees for public records requests; he suggested that copies of public

records requested by Board members should have fees waived. He showed a packet of paper and said he had paid almost \$80.00 for those copies and they had to do with planning and zoning and he felt that was exorbitant. At March 4, 2013 RTCM CM Milucky made a statement while discussing the appointment of Grant Ball to P&Z. Ryan said he wanted to read exactly what CM Milucky had said at that meeting: "in our town the people that controls what goes on in town is P&Z mainly because council gets turned over every two years or if you don't you get termed out at six. When you get on P&Z you don't seem to leave even when we try and get people to leave, they don't seem to leave." Ryan then asked CM Milucky who he meant by "we" – was it you and your wife Leeanne Saylor, member of P&Z Board or was it you and another Council Member. Ryan asked for a response. Chair said CM Milucky did not have to respond.

No other speaker cards.

CM Wayne Abare asked to make a comment. He said he had not intended to make a comment until after the letters were read. He served on PZ Board for two years before being elected to Council. These comments are his alone. He read a statement: She was very capable and the time he was on there he thought she did a very good job. He worked at Harris for 40 years and could get, without much effort, letters of support from co-workers and Harris customers including Lockheed, Martin Marietta and NASA that he was an excellent engineer; however, he could also collect several letters from co-workers claiming I should have been fired years ago. What would these prove - that, like most people, he has had his successes and he has had his failures. He summarized the recent events: in November 2012 prior to the start of a P&Z Board meeting, Mrs. Milucky felt two P&Z Board members (Pat Reilly & Don Krieger) were having discussions about her that may be relevant to the board agenda. Following the meeting she filed a Violation of Sunshine Law with the Florida State Ethics Committee. She made no attempt to resolve her charges at the Town level. By her own statements in the filing she stated she did not hear what Pat and Don were saying. In my opinion she demonstrated poor judgment. At a late November council meeting, before this case was resolved by the State, she read a statement where she felt Pat Reilly and Don Krieger should be removed from the P&Z Board immediately. This allegation also caused a delay in the reappointment of Don Krieger to the Board as his three year term was up for renewal in November 2012. On January 25, 2013, the State of Florida Ethics Commission met and found no probable cause to the alleged violations of the Florida Sunshine Law.

At a later P&Z Board meeting Pat Reilly took the high road and made a motion to make Mrs. Milucky first alternate (a position Abare held). There were no seconds. Grant Ball was then chosen over Mrs. Milucky to be the first alternate even though she had seniority with a vote of 5/0.

At the last Council meeting Grant Ball was elected to P&Z as a full member to fill the vacancy left by Bob Wilbur's resignation from the board.

Mrs. Milucky seems to feel she is a victim of this incident. To date she has not made any apologies or regrets to either the accused or the P&Z board. Does it surprise anybody that she lost some respect and trust from the P&Z members? It did not surprise Abare. In his opinion Bob Wilbur is a victim. But Pat Reilly and Don Krieger are the primary victims. They have had their reputations and many years of service with the Town of Malabar stained. It is like grape drink was thrown on their clothes. Once done you cannot wash out all of the stains. In conclusion let's try and resolve alleged violations at the Town level first. If he or she feels like they did not get a just or fair review, then escalate it to a higher level.

End of CM Wayne Abare's statement.

CM Jim Milucky stepped down from dais and went to podium and introduced himself as Jim Milucky, 1280 Highway 1. He stated that Wayne did not have his facts straight. The complaint was an ethics complaint, not a sunshine violation; it was filed with the Ethics Commission. Perhaps another

complaint will be coming. He said Leeanne did come to Council and read her complaint and the Council did nothing. Then he said let's read about dirty politics in Malabar.

He referred to a paper that was dropped off at the Property Appraiser's Office on January 7 of this year, anonymously. He read what was written:

"I suspect 490 Vin Rose Circle, Palm Bay, Florida is the primary residence for James Milucky and Leeanne Saylors, husband and wife. They currently list their business address, 1280 Highway 1, Malabar as their primary residence, with homestead, TA 285955. Leeanne applied for homestead exemption for 490 Vin Rose Circle, TA 2805526; 1060 Hunt Street, Palm Bay, has mailing address as Jim Milucky, 490 Vin Rose Circle. Sunbiz.org lists Fund Tech Services with address for Leeanne Saylors as 490 Vin Rose Circle. Regions Mortgage 10 Dec 09, lists 490 Vin Rose Circle as address for Leeanne Saylors. Quit Claim deed, recorded with both James Milucky and Leeanne Saylors with address of 490 Vin Rose Circle. 1280 Highway 1 is commercial and does not appear to have residential living quarters. This was filed with the Brevard County Property Tax Appraiser's Office."

CM Milucky stated it is the third time he has been investigated on this exact issue. This one was filed by a Council person; a vicious, malicious attack on him and his wife. Talk about dirty politics. So they were investigated. He has the conclusion – recommend continue homestead exemption. Investigator Bill Woodward and his assistant Lee came to his home, where he lives, where he votes, where he does his laundry. The audacity of this particular Council Member through nothing but harassment in order to lose his homestead exemption, to cost him money, to get him disqualified to hold a seat in this town, in theory to lose his license for falsely requesting something. That takes a lot of brass, a lot of brass to file that. It is worse than that, because even after the investigator concluded his investigation, he called a person on a sticky note, Jeff McKnight and his phone number. And he spoke with Jeff McKnight and Jim said the investigator asked Jeff where the Milucky's lived and Jeff said Palm Bay; he asked when he was by the place at 1280 Highway 1 and Jeff said the previous night; investigator asked how many cars he saw in driveway and he said none because they are all in Palm Bay, Milucky said there were five cars in the driveway at that time and three motorcycles in the garage and a boat in the backyard. They are all verified, they all have tags and they are all insured. So when he asks questions of this council, dirty politics and the attacks and then CM Wayne accuses us, Leeanne and Jim of filing these things; how would you like to have Jeff on your butt, turning you in and falsely making claims and then lying to an investigator about facts at issue? This is what Jim has to come up with. So those people that wrote all those nice things, he is sure they could come up with a few thousand more and these are people that also sit on boards with Leeanne. You have to sit with him for another year and a half. Check your facts, because he tries to check his and he would like an opinion from the Town Attorney at this point as to what he is entitled to do as a Councilman when he feels he has had this kind of stuff because he doesn't even know what other attacks are coming and he runs a business here and has lived here a long time and he doesn't appreciate these kinds of attacks, behind the back and done anonymously. Thank you very much. Jim Milucky, 1280 Highway 1.

CM Jeff McKnight said it was clearly not an anonymous request as he gave his name and clearly CM Milucky did not refute any of those facts he put on that list and gave to the Property Appraiser's office. All those are in fact true and that is why he wanted them researched. Where this is malicious is beyond him because those are facts. Milucky asked if he wanted to go back and forth. McKnight said he was glad this was brought up; he wasn't going to bring this up but he asked for everyone to step back and look at this logically.

Jeff said the first council meeting Milucky attended was the meeting that his wife attended and accused the two P&Z members; that was on November 19, 2012, of sunshine violations; that would have taken two P&Z members off, enabling her to move up to a fulltime member, which in his opinion was the intent. At the second meeting Milucky further tried to bring up the sunshine law

violation and was very upset that it wasn't on the agenda and then you tried to accuse Mr. Krieger of fire inspection violations and tried to get him removed from P&Z Board. On the third meeting Milucky tried to get Council support to have Council responsibilities to appoint Board positions at the same time he is saying they shouldn't be changing processes mid stream but that is exactly what he is doing in hopes of getting his wife on the P&Z Board.

Chair stated that this was not productive. McKnight said Milucky had five minutes and he has had 30 seconds. Chair suggested putting on agenda for next meeting. McKnight asked to finish his notes. Chair stated at the next meeting both could continue this discussion. Bud Ryan from the audience called point of order and said speaker had not finished making his statement. Chair said Milucky has not finished his statement either. McKnight said Milucky stepped away from the podium. Chair said McKnight could speak for one more minute.

McKnight said on 4 February, the fourth meeting, he had a list of P&Z members, how long they had been on Board and what District they were in and said they did not equally represent the Town. At the last meeting he attempted to counter the decision of P&Z to appoint Grant Ball. He thinks this is embarrassing to the Town, think it is pathetic. You can't keep pushing and pushing to try and get your way. This is really pathetic. You are like a spoiled little brat. McKnight said he was done speaking.

Chair gaveled the speaker as out of order.

F. ATTORNEY REPORT

We have a problem. Staff and I are put in the middle of this and unfortunately it creates an unproductive atmosphere at town hall. He can bill and will start. The residents will be paying for his time dealing with these collateral issues. This is blossoming into something larger. He has spent numerous hours and has not billed for this. Wayne said he hasn't contacted him on any issues and asked if there was certain Council Members that were running up the tab? Bohne said he has had discussions with Council Members and not billed for it. Wayne said he thought Bohne should bill for that and if you do bill it please identify on bill who he has conversations with.

Bohne said he usually does that. Usually these collateral issues don't take up a significant amount of time. He will start billing for this. This is FYI. How this gets addressed, he doesn't know. As long as it continues, we will have extended meeting. Wayne asked that he identify the council members on his bills. What he doesn't want is for Council to think that Debby and Bonnie are running up a big legal bill when they are not. Bohne said on these issues that we have been dealing with lately it is taken up a significant amount of his time and he has not billed for them. He will definitely note the name on the bills. At 135.00/hour it is significantly less than the 275.00 he charges his regular clients, it is taking up a significant amount of his time. Until this gets resolved and he doesn't know how, it is going to cause an unproductive atmosphere at town hall and cost them more for legal.

Bohne stated regarding there has been no substantive action on the litigation; he is still waiting for the amended complaint to be filed. Chair asked if Council had any questions.

CM Jim Milucky has a standing question on this resolution of a personal attack on a Councilman and filing a false report anonymously. Bohne said he didn't know if it was anonymous. Milucky said the report he got said it was anonymous, that is how it was titled and the paper that was attached had no date, signature or name on it.

CM Jeff McKnight said he was asked if he wanted to report it anonymously which is allowed and he said no and gave his name and number. Jeff is proud of his actions and does not think it is malicious. Jeff said he truly does not think the Miluckys spend the majority of their nights in Malabar.

Jim stood and said in a loud voice that they could adjourn and go to his house and see where he sleeps and see his dirty underwear. Chair pounded the gavel and called for order. CM Jim Milucky shouted that he will not sit down; he will not yield, because this is wrong and it is a lie and a lie repeated becomes true. Chair gaveled again and called for order. Milucky refused to sit. CM Abare and McKnight called point of order. Mayor called point of order. Chair again asked him to sit down. CM Milucky stated that he will not sit – he had been accused of not sleeping the majority of nights in Malabar and it is a lie and it is ridiculous – it is out of order. CM McKnight said he will call police. CM Milucky said go ahead. Chair again gaveled and called for order from Milucky. He said he sleeps at 1280 Highway 1 and until the accusation was retracted he would not. Chair told CM Milucky his objections had been noted. Mayor suggested they take a cool down break. Chair stated we have a long agenda and need to get through the rest of it. CM McKnight said we did not have these problems before November.

- G. BREVARD COUNTY SHERIFF'S OFFICE REPORT - none**
H. PUBLIC HEARINGS: 0

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

- Staff Report on Road Payback for Mr. Robertson – Hunter Lane

Wayne said he talked to him. Wayne said Franklin did good research on this and he is confident with her research that Mr. Robertson will get the money as stated in the memo. Clerk had given Mr. Robertson a copy of the memo. Chair had also spoken to Mr. Robertson. Thanked Franklin for research. Mr. Robertson asked when he could get check. Franklin said we will be printing checks in morning. TA said we can prepare it tomorrow and call him for pick up. Mr. Robertson thanked Council.

J. ACTION ITEMS:

2. ORDINANCES: First Reading - 1 Budget Amendment (Ord 2013 – 61)

Ordinance was read by title only.

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET AMENDMENT IN THE FISCAL YEAR 2012/2013 TO PROVIDE FOR THE INCREASED REVENUES RECEIVED IN THE FIRE DEPARTMENT; TO PROVIDE FOR ADDITIONAL EXPENDITURES IN FIRE DEPARTMENT FOR TRAINING AND BUILDING MAINTENANCE; 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 Action

MOTION: Jeff / Wayne to approve the first reading of Ord 2013-61.

Discussion: Franklin said she would make correction to title to include "building maintenance"; it is correct in the body of the ordinance.

VOTE: Jim Milucky, Aye; 1) Wayne Abare, Aye; Steve Rivet, Aye; Jeff McKnight, Aye; Marisa Acquaviva, excused.

Motion carried 4 to 0.

RESOLUTIONS:

3. Amend Public Records Policy (Reso 11-2013)

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Resolution was read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR AN AMENDMENT TO EXHIBIT "A – PUBLIC RECORDS POLICY" OF RESOLUTION 84-2011; PROVIDING FOR AN INCREASED COST FOR CASSETTES TO REFLECT THE ACTUAL COST; PROVIDING FOR A REQUIREMENT TO PAY BY CHECK OR MONEY ORDER FOR REQUESTS COSTING MORE THAN ONE DOLLAR; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Wayne / Jeff to approve the Reso 11-2013.

Discussion: Jeff said he has said all along to get rid of the cassette recorder and go to CDs. He said we could buy a commercial CD burner if necessary for about \$2,500.00. Chair asked if we have a CD recorder. Franklin said we did buy the CD recorder but it is very cumbersome to use and we do not like to use it. Until we get something else the cassettes are reliable. Jeff said then they should go out and buy one they like so we can move to CDs. TA said we have money in the budget for work at the podium and it is one of the things we are working on with Palm Bay IT. They are researching some alternatives and will have something soon. But the issue here is we have a standing request for audio copies of the meetings and the fee for the cassettes is not covering their cost so the taxpayers are currently paying for them. Staff is asking for a policy change for now until a better system can be found. TA said the other issue with this amendment has to do with the payment in cash. She stated we have been challenged on our policy of not accepting cash payments. When she started in 2007 and from her background in police work, she said the Town has a fiscal responsibility to establish policies that thwart any possible occasion where you could have internal theft. She is not stating that she is questioning any of staff; when you set up accounting principles, you build in protections to eliminate those kind of possibilities. But her bigger concern is for the safety of staff. That is why she set that policy. The last time we were challenged we had nothing in writing to say we don't accept cash.

She passed the rule when she came here that we would no longer accept cash. We tried credit cards for a short time but it cost more to offer that so we also discontinued that. Jeff asked for clarification. TA explained that a recent public records request totaled 59.00 or 69.00 and the person was told repeatedly that payment should be by check or money order. Individual said it would be a great inconvenience to do that. Jeff understands the issue now. TA said it is for staff safety. Cindi is in front office alone and Debby is in her office and TA is in the other end of the building and wouldn't hear if they were being robbed. Jeff thought she was going down the theft and he didn't know where she is coming. Wayne said we have digital recorder that can record to a flash drive. TA said the requested material only has to be provided in the format we keep it in. As Franklin had stated we are not required to create a new document or provide record on latest technology. TA also said that we are on reduced staff and don't have time to do the regular duties, let alone to pay someone to stand at scanner and scan in those records. The requestor said it all could have been put on a CD. That would have required staff to create another public record.

Mayor said he had no problem with a "no cash" policy. He suggested a sign at the front window that alerts persons that we don't accept cash. It would also alert would be robbers. The other is the cost of cassettes. Let person bring in their own cassettes.

Bud Ryan asked to speak. He doesn't like asking for the audio copies of the meetings. He has to because the written word is not always the same. Now he understands and he will get check or MO. He does not want to stop his requests. TA said for the record this is not meant to discourage anyone from making a public records request.

VOTE: Jim Milucky, Aye; Wayne Abare, Aye; 1)Steve Rivet, Aye; Jeff McKnight, Aye; Marisa Acquaviva, excused.

Motion carried 4 to 0.

McKnight asked staff to have information on new recording equipment for future agenda. TA said she would get something from Palm Bay.

4. Award Bid for Town Hall Wastewater System (Reso 12-2013)

Resolution was read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF BID PROPOSAL FROM PENCE SEPTIC SYSTEMS FOR THE REPLACEMENT OF THE WASTEWATER SYSTEM AT TOWN HALL; PROVIDING FOR FUNDING; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Action

MOTION: Wayne / Jeff to approve the Reso 12-2013.

Discussion: Wayne asked if the Town Engineer had reviewed and made the recommendation. TA said yes, this is an area of his expertise and he drafted the specs. Abare said regarding residential septic systems, as a neighbor has to replace their system it usually gets higher and could look like an elephant is buried in yard. TA said this one is commercial and they have a large area. She did say that there had been a well right next to the septic and she had that abandoned prior to the first RFP. Abare asked if it would have a pump. TA said yes and will show him the plans. TA said no it was not in parking area.

VOTE: Jim Milucky, Aye; Wayne Abare, Aye; Steve Rivet, Aye; 1)Jeff McKnight, Aye; Marisa Acquaviva, excused.

Motion carried 4 to 0.

5. Approve Resolution 13-2013 Supporting Grant Application for Sand Hill Trailhead – Funds for Restroom and ADA Improvements

Resolution was read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE RECREATIONAL TRAILS PROGRAM/OFFICE OF GREENWAYS AND TRAILS ADMINISTERED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR DEVELOPMENT OF A RESTROOM AND ADA TRAIL ACCESS AND PARKING AT THE MALABAR SAND HILL TRAILHEAD ADJACENT TO THE SAND HILL TRAIL AND THE AL TUTTLE TRAIL AS WELL AS MULTIPLE TRAILS WITHIN THE MALABAR SCRUB SANCTUARY AND THE CONNECTING BOUNDARY CANAL TRAIL IN PALM BAY; AUTHORIZING AN AMENDMENT TO THE BUDGET TO COMMIT THE TOWN'S 20% COST SHARE OF THE TOTAL PROJECT COST OF \$100,000.00, AND ADDING THIS PROJECT TO THE FUNDED ITEMS IN THE CAPITAL IMPROVEMENT PLAN (CIP); PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Discussion: Wayne asked if the majority of the money would be from the grant. TA said the in-kind portion could easily be covered by town staff doing the labor. She referenced the Town's copy of the grant application and invited them to look through it. The port-a-let would be replaced with a permanent ADA compliant restroom and other enhancements to aid disabled to enjoy the trails. TA explained the increased use of the trailhead by people with strollers and others due to the new asphalt trail. Word is out that Malabar has the best trails. Wayne said we would still be paying the PW crew. Wayne said if we are using our people then we are still paying out the \$20,000.00. He wanted to know what the real delta in cash would be. TA thought the cash could be as little as \$5,000.00. Franklin said she thought that there would not be that much our staff could do in-kind. Wayne stated that Town staff runs a lean and efficient operation and he has sat on two taxpayer budget review board and the first thing the members want to do is cut out more expenses. Mayor said the downside is using the in kind they are not doing anything else so the mowing doesn't get done and the ditches don't get cleaned. He said when we did that in the past the public works department spent six months doing in-kind when we built the park. Then when they had the

hurricanes, it was public works that handled the debris removal instead of hiring someone and having FEMA pay them. So his recommendation is don't use in-kind; take the money out of the bank and the town portion. He said with reduced staff if they are doing in-kind then it is taking away from their other duties. TA said that would be Council decision. Franklin said she saw a correction needed in the resolution. The resolution states that we will amend the budget and that is not correct. If Council approves this it will be in the budget unless we get word after the next budget cycle. Chair stated that if we are awarded the grant we can budget for the expense. Wayne had similar concerns as the Mayor. Wayne said Mayor Tom had told him that when you increase the millage by .1 mil you get \$28,000.00. So they could bump the millage up for next budget. TA said the commitment would be in this budget year. Council asked if it would be complete before October. She thought yes. She did not know the award date for the grant.

Brian Vail asked to speak. He asked if there were any developer fees that could be used for this. TA explained that there was only \$4,000.00 left and it was committed to the fence replacement at the soccer field.

Wayne asked if they could put this off until the next meeting so TA could bring more detailed information on actual cost to town. TA explained that she had brought this grant application before the seated council and the previous seated council. Franklin said we have brought this to them three times prior to the 2011 and 2012 submittals. TA said we had to mail the application by March 31, 2013. They mailed it off based on the prior Council support to commit to the cost share either in cash or in-kind. Wayne said they think it is a worthwhile project but don't want to commit the public works department to the work. Mayor agreed. TA said she will bring more info next meeting on how much the town could do in-kind. Carl said we got nothing done when other grants were awarded and we used in-kind work.

MOTION: Wayne / Jeff to approve the Reso 13-2013 supporting the grant application.

VOTE: 1) Jim Milucky, Aye; Wayne Abare, Aye; Steve Rivet, Aye; Jeff McKnight, Aye; Marisa Acquaviva, excused.

Motion carried 4 to 0.

6. Approve the Audit Report for FY 2012 (Reso 14-2013)

Resolution was read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING ACCEPTANCE OF THE ANNUAL AUDIT REPORT PROVIDED FOR FISCAL YEAR 2011/2012 BY THE AUDIT FIRM OF AVERETT WARMUS DURKEE OSBURN HENNING; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Discussion: CM Jeff McKnight said it was well done and applauds staff for their hard work. Chair Steve Rivet said in all his years with the Town they have made continuous improvements to the ability to limit spending and in the rigoristic of the accounting. He thanked staff for their good job and said to have a report with no findings so they should be complemented on their efforts. He congratulated them. CM Jim Milucky said he agreed and it is unusual for professional outside firms to come in and perform the audit and not have any suggestions is pretty powerful. Well done.

MOTION: Jim / Wayne to approve the Reso 14-2013.

VOTE: Jim Milucky, Aye; 1) Wayne Abare, Aye; Steve Rivet, Aye; Jeff McKnight, Aye; Marisa Acquaviva, excused.

Motion carried 4 to 0.

Agenda Item D.1e. Was Removed from Consent Agenda at CM Milucky request:

1e. Reso 9-2013 Grant Ball to Regular Seat on P&Z Board

Exhibit: Agenda Report No. 1e.

Recommendation: Request Action

Resolution was read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, CONFIRMING THE VOTE TAKEN AT THE MEETING ON MARCH 4, 2013 FOR THE APPOINTMENT OF BROMLEY "GRANT" BALL TO THE MALABAR PLANNING AND ZONING BOARD AS A REGULAR MEMBER; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Wayne / Jeff to approve Resolution 9-2013.

Discussion: Jim asked Attorney for clarification, what are they approving? The Attorney said the resolution; the Council action of appointing Grant Ball was done at last meeting. Bohne said that staff did not have the resolution in the agenda package of March 4 and that is how they track appointments – using resolutions. Jeff asked if that was a requirement. Bohne said not legally but procedurally they do resolutions. TA said it is to correct an error by staff; we had referenced the resolution but did not include it in last package. TA stated she asked Council at last meeting if this could be on consent agenda since they had already appointed him. This corrects that. Attorney stated that voting in favor of this resolution does not change his vote from the last meeting. Voting in favor of this resolution just confirms the vote on the appointment of Grant Ball to regular seat on P&Z Board done at RTCM March 4, 2013.

VOTE: Jim Milucky, Aye; Wayne Abare, Aye; 1)Steve Rivet, Aye; Jeff McKnight, Aye; Marisa Acquaviva, excused.

Motion carried 4 to 0.

MISCELLANEOUS:

7. Procedures for Teen Council (Rivet)

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Discussion: Chair brought this up. Would like some documented procedures on how we are going to run this program. Mayor Tom had started it and ran it. In the recent past Mayor Carl has had to ask staff to help put the agenda together. In Chair's opinion the staff does not have time for it. He wanted to bring before Council how they should handle it. He doesn't have the answer but would like to discuss it with Council.

Mayor said when it started Cindi's daughter was on the committee and Cindi donated her time taking minutes. He said there was a change when daughter left and Cindi may have started getting paid. There is nothing that says it must be done by staff; one of the board members could do it. The problem now is that they have one finishing up this month and they have only had three active members prior to that. Members are getting older and may be getting interested in other things. He had wanted to bring this up at the May Teen Council meeting and ask if they want to continue.

Mayor stated he brought a subject matter for the April meeting which was the fact about the southern border. He mentioned it to Cindi and she was going to download the information we had, which was deeds showing who owns what because Grant Valkaria owns to the middle of the road; corporate boundaries go to the middle of the road but we own property in Grant Valkaria and he thinks that should be resolved. Mayor stated he got an email from Cindi saying she had discussed it with Debby and it wasn't an issue and he had to come up with another subject.

Mayor said first of all he doesn't think the Clerk should be screening or the recording secretary or whatever, but the bottom line there is an issue there, liability there, if something happens south of the corporate line it is our property but it is in Grant Valkaria. Multiple requests to speak.

Chair said the purpose of the Teen Council was to provide a simulation of a council meeting. The Town staff is very, very, lean. They do not have manpower to do research. CM Abare said that Mayor Tom would attend the P&Z meetings for hours and do research and then go to the Teen

Council and fill in and being an energetic type of guy it worked. With Mayor Tom's passing, if someone doesn't take that role he is not sure it will work.

CM Jeff McKnight suggested they advertise for volunteers to help out; advertise on marquee for a committee that would rotate and volunteer and help out. Mayor stated there is a person in audience that may have the answer. He stated they may not be able to talk anymore after this.

Chair recognized Liz Ritter and invited her to the podium.

Liz Ritter, Orange Avenue, stated she has been with the Teen Council since it was started. Most of the members have been scouts. Rivet's son has been in and out, Brian Vails two kids have been in and out, but mainly it has been scouts. She said her son won't be a teen after this month and some of the scouts are moving on so there really hasn't been a lot of outsiders; its been. Scouts and Council's kids. Mayor Tom did it all on his own because he started it and was involved with the scouts, he has been their badge counselor and did executive stuff for them to show them what it is like to participate in government. One of the members on Teen Council was also on a similar thing at school. So she didn't think it needs to be that technical, because it wasn't meant to be technical, it was meant to be fun. Mayor Tom and his wife would bring drinks and treats and cup cakes. She also thought Cindi was volunteering her time when her daughter was on but it doesn't have to be that official. They were showing them the process of how the minutes are approved. She thought they should see how many kids are interested in continuing because they are moving up. Mayor Carl has come and tried to fill in but Mayor Tom came up with all the ideas and did all the leg work.

Mayor said he wasn't told and just learned that this would be the last meeting of the season before the break and he thought it was apropos; when he got in there he said he was not going to chair or act as attorney. He thought the boundary issue was legit but he got an email that it was not. He was asked by Teen Council for topics that were more current to Malabar. He thought he could bring it to Teen Council and then bring it to Council. He brought it up when he ran for Mayor 30 years ago and got blown off. It could be messy if something happened. He thought Teen council discussed it first they could bring up other issues I didn't think of and we could do a better job when it got to Council. He will talk to them and see if they need to put them in abeyance. Liz will ask on Thursday. TA said the application has part of that on the top of the application and put it up before the school year. Mayor said they could have a meeting and come up with their own policies and procedures on how they do their own board. Chair said so what are you suggesting? Mayor said to have the April meeting and do the boundary thing and ask if they want to continue. Then before they crank up in the fall contact them and have a meeting to see if they want to group up.

CM Wayne Abare said they need a champion; without a champion it will fail. TA said a committee may be the answer; ask the parents if they want to take it on. CM Wayne Abare said if everyone is in charge, then no one is in charge. You need to have a leader. Chair agreed a committee could work but you have to have a leader.

CM Jeff McKnight said it sounds like there may not be much interest in this continuing. Mayor said if you have only three active members and one doesn't attend then you don't have a quorum. TA said she thought they also wanted to determine what part staff would have in the preparation. She understood Cindi had to put other work aside in order to get the packages out; when Mayor Tom essentially put the package together and she just had to send it out. Chair said he didn't think they could ask staff to support any research. TA said back when it was kicked off Council was adamant that it not be a staff function, but it has worked its way into being Cindi's job. Jeff took minutes one time. Wayne asked if Mayor planned to continue. Mayor said they have most of the research for the next meeting done, unless someone says he can't discuss or bring as a project bring to the teen council about the boundaries, then we are still a go for it.

Liz Ritter spoke again and said the teens usually take a break during summer. If we do the last meeting. She will meet with them on Thursday. Brian will check with his kids. Then they can reassess in the fall after school starts and see if there is still interest.

Franklin said for the record the issue with the southern boundary was dealt with in the 1990's when the county gave us the south half of right-of-way on the rights of way dividing Malabar and then Brevard County. We got the documents recorded and gave those documents to our surveyor who updated our survey to incorporate the new boundaries. When Grant-Valkaria incorporated, they used what they thought was the northern boundary – the centerline, we provided them with the documents so they could correct their legal description. Franklin further stated that she did not at any time tell the Mayor that he could not put that on the teen council agenda. Franklin wanted Cindi to provide the Mayor with the facts. She does not screen the agenda or even review it; she just wants him to have the correct information. Franklin further stated that the Clerk's office does not tell Council what they can do. Rivet said that the bottom line was they can't afford to have Cindi do the research.

Mayor said that Cindi is not doing utility stuff so she should have time for this. Also should be supporting stuff for the kids in the community. He has evolved them to run the entire show and they want something real and current to deal with for the town. If the town is not going to support it with staff then they have to come up with volunteers or parents to do minutes and stuff like that. Chair said if Mayor is running it then he should be doing that research. Mayor said he was not aware it was his responsibility to do that. He gave topic to Cindi. But he could bring his laptop down and use the WIFI to download. He has dial up and it is slow. Chair said we need someone to run it that can do the research; if Mayor wants to do that or if it is someone else. Mayor said he will do the last meeting and then check in over the summer time and see if they want to continue. Maybe they need to have a minimum number of participants before they start back up.

Chair asked for any other comments. None. Chair stated they will go forward with the April meeting and he asked the Mayor to follow up with Council at the next meeting.

8. Policy Regarding Issuance of Waivers re: Tree Removal & Replacements

Exhibit: Agenda Report No. 8

Recommendation: Request Action

Discussion: TA said we recently had issue where five oak trees were removed from property on HOA property. After the fact they are saying they are deceased. They put in trees in another area. Per our code you have to put in similar trees. They had a meeting and the BO said they have enough trees and issued a waiver.

Before he gives the waiver, have it reviewed by TA. Atty said give Bonnie the authority to review this waiver process. Or do a moratorium which could create more problems.

Wayne said what she is proposing is an excellent idea.

Wayne was asked by a P&Z. Franklin said Council motion is law.

MOTION: Wayne / Jeff to give TA stop gap authority under Sec 2-300, to review any tree removal and/or waiver before it happens.

Discussion: Code gives BO authority to grant waivers to tree removals. It is a stop gap until they can rewrite section.

VOTE: All Ayes;

9. Policy Regarding Eagle Patrol

Exhibit: Agenda Report No. 9

Recommendation: Request Action

Discussion: TA said we are down to one team that if people want to go around with them. First thing is liability if they have an accident. We don't have a ride along policy. Insurance doesn't

cover ride alongs. She is asking several things. With only one group going out, go to the COP program. See how many are interested. Council has always given direction. It has gone beyond the policy. It is our car that we own and insure and the team members are trained. Need council to give her direction.

Mayor said what they are looking at is to add a three-man team. So if one has to give them. In the Eagle Patrol, The newsletter article says go out for a ride along. TA said they go through a 20 hour training. TA said Council gave her direction to get involved with BCSO. In COPS program they provide the car. The Eagle Patrol doesn't have to go away. Wayne said they don't get involved, they don't carry guns. Wayne said we have to be careful. TA said she is looking for authority to do memo to Building Department. Mayor said if they go with the COPS program, the BCSO will provide the uniforms and the Eagle Corp members will lose their identity. They don't want to be used to deliver time cards to Viera. Wayne asked TA if they could meld the Eagle Patrol members into the COPS program. TA said the melding wouldn't be much since there are only 2. Mayor said there is a third one they are using.

Wayne said Drinkwater said we could do what we wanted in Malabar. Have to check with new guy, Major DeSantos. Wayne doesn't see a downside with going with BCSO program. Mayor volunteered to be contact with BCSO. He is neutral on this issue. He further stated that he got the information at 9AM on Sunday about the interest in a third rider.

No motion needed.

(Attorney asked to stay for first Discussion Item) Discussion Item 10 moved to next item)

10. Board Procedures (Ord 2013-xx)

Exhibit: Agenda Report No. 10

Recommendation: Request Discussion and Direction

Discussion: pg 60 title says code amendment and it should be changed. Atty said staff was direction to come up with something without much direction.

Wayne said this started when they realized when there are term started and adding T&G. Atty said then they added how appointments are made. Some things the Boards currently do that may need formalizing.

On page 2 of the draft ordinance the attorney has included comments from Jeff, Steve and Wayne. Steve's suggestion conflicts with Wayne's. Jeff withdraws his comment and supports Wayne's. Steve said his thoughts that the P&Z Board has become a group of their own (side 3 mid way)

Dick Korn asked aren't terms staggered. Yes. Dick said they used to do the recommendation by the Mayor with appointment by Council. Wayne said the start and end of the term was agreed to by Council consensus to be term starts in November and ends in October. Wayne asked how Dick does it. Do they appoint Alt 1 and 2? They have done it amongst themselves and their board usually gets along. Usually it has been the most senior alt but in one case the most senior was not as available. Seniority was a factor on their board.

Wayne said on P&Z they had a senior member but was caring for her mother.

Wayne asked if they decide and then bring it to council. They do not do that. They do in internally but at a minimum Council should be apprized. If it does go to council and unless they have a very good reason, Council should go with Boards recommendation.

Dick said definitely include the start and end date. What the council needs to do is get on with the business of the town. Wayne asked Dick to look at it.

Bud Ryan has been on two Boards - BOA and PZ. You place a lot of confidence in them when you place them on the Board. You should allow them to determine how to control their own destiny.

P&Z is unique because it is highly technical. He finds it difficult to believe the Council has the ability to know who is the better qualified.

Jeff said Council should not be making decisions without hearing the board's recommendation. Steve agrees with that. Jeff said the boards can make recommendation and the final authority rests with Council.

Jim if it were any other time we would not be having this discussion. He asked that they take personalities out of it. There is nothing that says you can't have a 7 member board. It is also the local planning agency. Jim said consider changing the board so there are 7 member board and no alternates and have a quorum to be determined by council. There would be 7 votes. A quorum is 4 members. He also likes doing the appointments in October. This is a way we can move past where we are. Boards select their chair and vice chair, set their agenda, go to meetings and vote and go home.

Bud Ryan, the big issues is the ranking of alt 1 and 2. Let the Board decide when an opening let the Board decide. Bud said they would still have issue with alternates. Jim said if they go to 7 there are no alternates. He also said that noticed meetings should only be cancelled if there is a failure to have a quorum. If there is a question if there will be a quorum then staff calls and determines if there is a quorum.

Wayne said Jim's idea had merit. An alternative would be to not have an alt "1" and "2" but rather have them alternate voting when needed.

Mayor said Council has five members and no alternates. P&Z has alternates. They have had times when there were no alternates. If we are operating with five member boards so why change it for one. He understands what he is saying but doesn't think they have enough residents to go to 7.

Drew volunteered to chair a committee that was floundering. The concept of people volunteering. Some of the disparity, the town council needs to approve the members, definitely. If you expand to 7 then you can have a sliding number for quorum. The people that are going to participate are they are going to volunteers. The Boards need to simple and not political.

MOTION: McKnight / _____ to extend for 15 minutes. **No second.**

Chair declared the meeting adjourned at 10:30 PM.

BY: Carl A Beatty
Mayor Carl Beatty

ATTEST BY:

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

Date Approved: 5/6/13 as corrected

(seal)

