

MALABAR TOWN COUNCIL REGULAR MEETING

August 19, 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 Mayor Carl Beatty.

B. ROLL CALL:

COUNCIL CHAIR	STEVE RIVET
VICE-CHAIR/MAYOR:	CARL BEATTY
COUNCIL MEMBERS:	JIM MILUCKY
	WAYNE ABARE
	JEFF MCKNIGHT
	MARISA ACQUAVIVA
TOWN ADMINISTRATOR:	BONILYN WILBANKS
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN
DEPUTY TOWN CLERK:	CYNTHIA KELLEY

For the record, Town Engineer Morris Smith is present.

C. ADDITIONS/DELETIONS/CHANGES: Franklin stated that the Resolution for Procedures can be added or not. Rivet stated it will be taken care of at that time.

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. Minutes of 6/17/13, 7/15/13, 8/5/13 (ws and reg)

Exhibit: Agenda Report No. 1a

1b. Budget Adjustment (Reso 25-2013)

Reso 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.

Exhibit: Agenda Report No. 1b

1c. Acknowledge Receipt of June & July Financials

Exhibit: Agenda Report No. 1c.

Recommendation: Request Action on all with one motion and ROLL CALL vote.

MOTION: Milucky / McKnight to approve the consent agenda.

Discussion:

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

Motion carried 5 to 0.

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

Karen Moravecky, 1825 Eva Lane, came forward to address Council. She would like to see Eva Lane paved. The Town had an ordinance to build the road and then they took it over. It has not been maintained very well. She stated that Eva Lane was once on the list of roads to be paved and it was removed. Eva Lane is very special in that area; it connects to Malabar and Hall Roads and is used as a through street. There is added traffic on the road and it is a dirty, dusty mess. Mrs. Moravecky stated that she felt that Eva Lane has been ignored for many, many years. It does have additional traffic that causes a lot of dust; it should be paved. If it can't be done at this time, work to budget the funds within a few years.

David Ruip, 1830 Eva Lane, came forward to address Council. He is in agreement with Mrs. Moravecky. Back in 2003, he brought in a signed sheet from the home owners on the road asking that they be added to the list for paving. Most of these people are still there; they signed the paper back then and they would still be interested in a paved road. Mrs. Moravecky stated that there are companies out there that will help with the dust control. If a car goes by, you need to have something to cover your face as the dust is so bad. The residents deserve the paving; it's become a health issue.

Mayor Beatty stated that at one time we had a list for collector roads. We need to go through the list and see what the next level of paving is. There are some treatments for dust. We need to look at what roads need to be paved. Eva Lane is a cut through road; not a collector road. The Town needs to start a program to find out what the next level of paving there is to do.

Acquaviva stated that was something that was brought up each year. Did fall through? Mayor Beatty stated that it was for collector roads; there was a big discussion but we ran out of money. LaCourt was on the list and had the same financial difficulties. Rivet stated that this is something that is on the wish list; he is pushing for this to happen.

Drew Thompson, 940 Holloway Trail, came forward to address Council. He has a concern that has been observed over time regarding the budget. If the Council is overly conservative and if not looked at, the Town is going to be short in the infrastructure. Brook Hollow has some major items on the list. He very highly recommends that Council look at the future capital items that are inevitable. If property values go up or down, he encourages Council to move forward. Council determines the future of the Town. Rivet asked if he would be in favor of a millage increase for infrastructure. Thompson stated it's not always about the immediate money.

Rivet called Mayor Crews to speak. Mayor Crews asked to wait until agenda item #3.

F. ATTORNEY REPORT

Bohne reported that the Painted Acres law suit was dismissed without prejudice; down side is they will try again to re-write and re-submit complaint.

Bohne reported that they are very close to the Interlocal Agreement with Grant Valkaria for the transportation impact fees. If the moratorium is lifted with the County, the funds come to Malabar. Once done, this and the golf cart ordinance will be brought back to Council. The target date is second meeting in September. Abare asked Bohne if the County has anything

in place for golf carts. Bohne stated they do but if Malabar goes with them, the County can pick and choose different roads they can be used on.

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**

J. **ACTION ITEMS:**

ORDINANCES: First Reading – 0

RESOLUTIONS: 1

2. **Approve Stormwater Non-Advalorem Assessment Roll (Reso 29-2013)**

Reso read by title only

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING CERTIFICATION OF ANNUAL STORMWATER UTILITY ASSESSMENT ROLL; PROVIDING FOR APPROVAL OF AN ANNUAL ASSESSMENT AMOUNT FOR THE TOWN'S STORMWATER UTILITY; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 2

Recommendation: Request Approval

MOTION: Acquaviva / Abare to approve Resolution 29-1013.

Discussion: Abare asked who comes up with the formula. Franklin gave a brief over-view of this.

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

Motion carried 5 to 0.

3. **Approve Amendment to Council Procedures re: Meeting Decorum and Debate Process (Reso 30-2013) (Acquaviva)**

Mayor Phil Crews, 840 Whimsical Lane, came forward to address Council. He has heard from some that the meetings are long and contentious. The book, Robert's Rules, can be your friend. The more you know, the better it helps you. He would like to suggest that each Council member read the book; the Chair needs to read it as well because if Council reads it, they will put the questions to the Chair. Acquaviva spoke to Mayor Crew's comments. There were times when Council wasn't finishing the business on agendas. Mayor Beatty stated that we adopted, by Charter, the 1985 edition of Robert's Rules. This is the version we are operating under. He stated that we need to sit and look at Robert's Rules in its entirety and go from there. We should produce the document that was adopted; we can't change the Charter. Abare stated that Robert's Rules gives Council guidelines. He's glad this was brought up. Acquaviva asked Bohne what we get every year. Bohne stated that they come out with editions; not a lot of changes. Rivet stated that Robert died way before 1985 and there are no more new rules.

Bohne stated that with a small society, to be consistent, we can come up with rules that help. The society has to do with the number on Council; we are under 12 people. Milucky spoke to this. He suggested that we accept the suggested changes as given. Mayor Beatty called **POINT OF ORDER**.

Brian Vail, 2700 Smith Lane, came forward to address Council. He shared the same concerns that the meetings are too long and agendas are not completed. He doesn't feel strict rules are in order.

Mia Crews, 840 Whimsical Lane, came forward to address Council. It is nice to have procedures in place. She asked Bohne to clarify. Bohne stated that under section D for the meeting process, it is consistent with Robert's Rules and a small society. From what he can tell, it is consistent. Bohne stated that the resolution needs to be read by title only.

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING RESOLUTION 11-2012 RELATING TO COUNCIL PROCEDURES; 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 Approval

MOTION: Milucky / Acquaviva to approve Resolution 30-1013.

Discussion: Milucky stated he felt that it is not appropriate to have public comments prior to the discussion with Council. This Council has enjoyed dialogues between Council and residents. Taking out the contentious parts, with normal topics, Council tends to get derailed. It is the responsibility of the Chair to bring the meeting back to order. Council relies on the Chair to tighten up the meeting but allow some of the looseness. Acquaviva stated that the point was at the last meeting, we had time-sensitive things to be addressed and we almost didn't get to them. Abare spoke to the resolution. He will try to make an effort to limit his questions and withhold comments. McKnight stated he will not support this as it wasn't in the packet for Council to review. He would rather table this to the next meeting but we have a motion on the table. He would like to see who extends the meetings most with Council people. He would contest that it is the Council people holding up the meeting and not the residents. TA stated that this part was in the packet and on the agenda. The resolution was not provided.

Mayor Beatty stated that the time he chaired the meeting, he found out that day at 3:01 pm. Had he known before hand, he would have pulled two items on the agenda for the evening. Rivet state that any Council member can call to stop a discussion in the section of the agenda under additions/deletions/changes. This can be done at the beginning of the meeting. Acquaviva stated that she is in agreement with McKnight. Bohne advised McKnight that he can make a motion to table with a motion on the table as long as the vote has not been taken. Mayor Beatty stated he beliefs this should be tabled. We need to know what we are looking at. McKnight stated that he felt that when the information is available for Council or the public to review, it should not be on agenda.

MOTION: McKnight / Abare to table Resolution 30-2013 to the next Council meeting.

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

Motion passed 3 to 2.

4. Approve T&G Terms for Current Members (Reso 31-2013)

Franklin provided a brief over-view to Council for the terms of the T&G Committee.

Reso read by title only

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR COUNCIL APPROVAL OF TERMS FOR THE VOLUNTEER MEMBERS SERVING ON THE TRAILS AND GREENWAYS COMMITTEE; PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 4

Recommendation: Request Approval

MOTION: Abare / McKnight to approve Resolution 31-1013.

Discussion: Franklin stated this resolution will formalize the terms for the T&G Committee. Mayor Beatty asked if Council wants to have terms for the T&G Committee. All the terms for

three years are from District 5; it has a negative perception. Mayor Beatty stated that the wording may need to be better; not as re-activating the committee. He also doesn't feel that Council should dictate who should be the Chair. He wants the language to be the same as it is for every other board/committee. Need to adjust the language and have it back at the next meeting. Do whatever it takes to have a clean slate. Add repealing verbiage, remove reference to the chair and remove the term for the liaison. These people are being appointed because we are repealing the previous resolution. Abare rescinded the motion. Bohne suggested that Council move to table.

MOTION: Abare / McKnight to table to the next Council meeting.

ROLL CALL VOTE: Jim Milucky, Aye; Wayne Abare, Aye; Steve Rive, Aye; 1) Jeff McKnight, Aye, Marisa Acquaviva, Aye.

Motion carried 5 to 0.

MISCELLANEOUS: 3

5. Direction on W. Railroad Ave. Right-of-Way Issue

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Chair asked TA to explain. She turned the floor over to Morris Smith, Town Engineer. He stated that the owner of AAA Malabar Storage had come in with a site plan modification based on the truck traffic. In the initial plans, it was not constructed as drawn. The fence line that was constructed was not done correctly. There are other current improvements that are hard to deal with and other surface areas that are being used in the Town's right-of-way. Mayor Beatty stated that we need to make contact with FEC and see if we can come to an agreement; we leased the five foot area for several years and found that we needed to turn the land back to the way it was when not leasing it from them anymore. Abare stated we need to find out who owns what and how much was paid. Smith stated that private use cannot be done on a public right-of-way. The things and equipment would have to be removed; the septic system would have to have a variance. The variance would have to be based on a hardship not caused by the owner. In this instance, the hardship wasn't created by the owner so more than likely, the variance would be granted. Smith recommends that everything be removed from the Town's right-of-way. Mayor stated that the road issues need to be addressed and taken care of before we can address this issue. McKnight asked the attorney for his point of view. Bohne gave a brief over-view of what he knew of the situation. He stated the Mayor had good points as well as the Town's Engineer. If lot 10 could be obtained it would help the situation. The Town shouldn't do any approvals until this is sorted out. It was stated that we know who owns lot 10; a letter of intent from the Town would insure conversations with FEC.

Acquaviva asked about the funds spent for the survey. TA stated that the code allows her to spend \$5,000. Sometimes she brings things to Council for their approval and input but it was very important to get the ball rolling to get answers. Bohne stated that he can do the research regarding the titles to the property; it will be \$150 per search. There is potential to purchase lot 11. For any other use, lot 10 is useless. It is the general consensus of Council to have Mayor Beatty begin speaking to FEC with factoid; TA will have the attorney do the property searches and the Town Engineer will provide information as it is needed to the attorney and the Mayor.

6. Approve Solid Waste Scope of Services

Exhibit: Agenda Report No. 6

Recommendation: Request Approval

Rivet stated that he is happy with what the TA brought to Council. We should go to RFP and come back to Council for approval and award of the contract. Abare stated that regarding unlimited bulk waste, if he were WM, he would jack up the prices. Mayor Beatty

stated that there should be language for staging areas. It is the general consensus of Council to go forward with the RFP.

7. Town Administrator Contract (Milucky)

Exhibit: Agenda Report No. 7

Recommendation: Request Approval

Rivet stated he has one speaker card and current policy states we hear from the Speaker's cards first. He called Drew Thompson to the podium.

Drew Thompson, 980 Holloway Trail, came forward to address Council. With fiscal observations of the town, there has been quite a lot of talk this evening with Robert's Rules and the professionalism of these Council meetings. Tonight is has been benign but he has been here when it has been heated. It's a true reflection of people having strong feelings on what they believe is best for the town; he applauds that. You all are here getting paid very little, like zero, to do what you are doing. He has spent a lot of his time doing volunteer work as well and he fully empathizes with what Council wants to get done. He wants to emphasize, with the Town growing up and taking things seriously with the fiduciary responsibilities that you have, you really need to make sure that your town is staffed properly; not only the TA, but the entire group of people who are here, who call this their career. You are basically there to guide and encourage them, give them your ideas. You need to make sure that you have the right people in place and that they are properly qualified; that they actually have the experience and interests of the Town and have some guidance from Council that there will be a town in the future. It's not just anybody's current objectives at this time while they are on Council. Quite frankly, Council members come and go but the town's going to be here long after and what level that town is after a Council comes and goes has a lot to do with who you employ, the extend of effort and support you show that group. He encouraged Council to maintain a high quality of professionalism, education; get your top people and show them your support. He thinks that if looking from a budgetary perspective, if you're at a point to where you think you can save dollars by cutting back on the amount of effort your funding your daily staff, from a professional perspective, he does not see this as the route to go for the future. He does not see that as the proper route for representing your constituents. The town needs to be here in the future. Professionalism is huge; the people here this evening, no offense is meant by him, but you are not professionals at being Town Council people. You are doing your best; you are doing a great job, you are the people that stepped up and got elected. But, quite frankly, you are not being paid and there are people that do government stuff that are paid. These are people that spend all their time and education and they get into it for years and it is their career. You are really bound to make sure that your town folks are there for you every day; they are there for you when you are gone from Council and they are there for you in the future. They are there from keeping the liability issues from hitting the fan; those type things. You have to have the right folks. You have a good group of people now; you have to encourage them, show leadership and support. You need to get past some of the things because frankly they are there all the times when you are not meeting at Council. They put the fires out and look to the future and make the right decisions and have the right insight on the day to day basis. Please don't overlook that. When you look for ways to do things differently, maintain that professional level and encourage your staff. It is really critical that you keep good people; they are very hard to find. You don't want the town to have a reputation of throwing good people away at any time. The Town of Malabar wants good people with professionalism and they expect that of their Council as well.

Penny Dalton, 900 Holloway Trail, came forward to address Council. She is in agreement with Drew Thompson. She has been before Council to speak before. She was a teacher for 25 years at the same school; teachers today could be replaced by robots. However, a robot

will not do what she did for her students for 25 years. Being a resident, a volunteer and on the HOA, she has come to Town Hall on several occasions and has always been greeted with graciousness by the four ladies that represent you. Each one of the ladies has helped her in many ways with whatever has been needed by her. IF Council is thinking of down-sizing that, it would truly hurt the resident's ability to come to Town Hall and get the gracious service that they receive. She would just ask that you keep the level of professionalism that we are always guaranteed at Town Hall; that you would keep the professionalism at Town Hall as we are represented in other communities and at other townships. She is asking that Council really consider looking beyond the budget constraints and keeps the exemplary service that you have always offered to your residents.

Chair Rivet turned the discussion over to Milucky. He stated he brought this from the last budget workshop meeting. He did make a proposal at the last budget workshop. The people in the audience were not in attendance; he's not even sure that Council or staff understood what he was proposing at the last budget workshop, so he felt he needed to put this out again for understanding.

The town was run by a TC 20 years ago; we are not a big town; he does appreciate the small town aspects. He is wondering if there is a better way to run the town. He doesn't think anyone heard that statement; is there a better way to run the town was his question. So with eliminating the executive budget, we could add staff to the Clerk's department under their direction to improve town services, was his intent. No one heard adding proper staff. What the ideas are were for less confusion, fewer squabbles, fewer turf wars and fewer disagreements. That was his idea; his novel approach to it. That, apparently, has still fallen on deaf ears. He hasn't changed his opinion. The budget for the executive department is \$112,000; he is not saying it's low, middle or high. What he asked this Council was, for the budget process, is this the best way or is there an alternative? He is still asking that of the Council tonight; he's not changed his stance on this.

At the last budget workshop, it was said to this group that the contract for our TA reviews annually in April. We have a copy of the contract that was issued in 2007; several things bother him as to what he was told. The contract is not renewed every April; this Council, to his knowledge, has not discussed personnel issues because, first of all, we are covered under sunshine and no one wants to hurt someone's feelings and there's no way to address these kinds of issues with Council without the scrutiny of the public. So with all due respect to the public, if you don't want to hear, then go away and don't listen because this is an uncomfortable discussion. He doesn't know another way to do it. Prior Councils, he guesses, decided they were too chicken or they were just so happy that they didn't want to deal with it. He is neither of those; he challenges this particular Council to look at the contract that is in perpetuity. He's not an attorney; believes it is called an "at will" contract. It was started in 2007 and it has no end date. It has no provision for direct review. What he would report is that, at some point in time, a good manager reviews his employees. He's sure at Harris and DRS they are reviewed and this Town should be no different. We should review all of our employees starting with the TA and there could be good things in there; all the good things that we've done. You made the assumption that he's going to talk about all the bad things. Well, you've made that assumption, not because I've said anything. You've decided for me what he was going to say. I might have said good things. But now I'm going to say some good things because she's made an assumption.

So, once again, he thinks Council should review our agreement with the TA, review the benefits package and review what have we done, what goals have been set and accomplished. The school children are required to take standardized testing, we need to review. He would ask this Council if we are going to spend \$112,000 a year, that this

Council review the contract and make a conscious decision to renew that contract and tell the taxpayers of town that Council has done their due diligence; that they have reviewed the work and we are happy with what we have or we've decided to make some changes. That's really where he was coming from; what he was very bold by saying to take it to zero and this is his proposal. At least he came to the table with a proposal. No one heard, though he made it. He makes the same proposal tonight. With all due respect to all of Council, he runs a business, many of you do, and if you have an employee that you aren't happy with, you don't bring it to a public meeting and say do you mind if I do some course corrections. You take that employee behind closed doors and you review their work load and take an opportunity to do some course corrections. In government, this is the only opportunity to do this to his knowledge. We have to do this in a public forum unless we have a better way to do it. He thinks that there are some things that he doesn't get to speak to the Council about unless in a meeting. With that in mind, he will yield the floor and respond or be quiet as Council chooses.

Acquaviva stated that she knows that Milucky is new to Council this year. Four years ago, she was new to this as well. She made everybody have a personnel workshop. Council did a workshop where Council went through everyone's job duties so that Council knew what each person does. Council is called to review the people that they hire which are the TA and the TC/T. She has done that; she didn't do it last year, she asked for the form but didn't get to it last year. She doesn't know, on this Council, who knows about this form, but we do have a process. She knows that some people were uncomfortable because they don't know what they are doing as they aren't here every day. Just on the basis on what you saw, do a write-up and then speak to the person about it. A personnel workshop is a great way to do this as well. She thinks there are other issues here with staff that if they want to speak where the public isn't speaking towards it. The public can be here, they just can't speak to it. Also, to Milucky's credit, not to she's saying yes/no and she doesn't think this was about Wilbanks per say, but she thinks what got her in the budget situation was that Town staff was coming to Council for more positions. So there was a proposed 30 hour clerk; they needed an accounting clerk. Everything is on the table at a budget workshop; you all know that. So when, now, we are looking at adding more positions and we are having problems answering the phones; we are hearing these situations that are going on down here and everyone is wonderful and professional. They do jobs that, she's down her a lot and she knows what they do. So seeing it on the wish list to have more staff here, she thinks, to Milucky's credit, we need more butts in seats. She came out with that when you said we need more butts in Town Hall. There's problems answering the phones; let's possibly do a roll-over. We were coming up with; so she thinks it wasn't like get away with that. So we need to be re-structuring and we need to be renewing and looking at our contracts. That's what Milucky is looking to do. She thinks everything is on the table at the budget workshop. That's what she has to say about that. But we do have a process and we should be reviewing those people and you don't know that.

Mayor Beatty stated that he was going to reflect on a few things and people may not be happy. He keeps getting lobbied that "she's not doing anything; the other one is doing all the work". The bottom line is we came up with job descriptions and listing; people picked what they want. He thinks Council should decide if the road issue should be done in the front office or the back office. We should delegate authority so that we don't have one person saying they are overloaded and someone else being blamed on not doing anything at all. He thinks that is Council's responsibility. That's the first thing we need to do; to level the playing field of who's doing what and what's on second. He gets a lot of lobbying; one item was brought through and then later on it's said that this is a good idea. You forget the fact that it was crap before. So sometimes issues changes. He's been here forever; he has PO box 1; he was the first full-time employee, he's been through every town manager and

every style and all the clerks so you can't tell him anything new. He's not perfect, don't get him wrong, but he's been there and done that. Right now, we have a turf war; that's what we are dealing with. We, Council, should divide the turf.

Abare stated that some Council meetings, we asked Wilbanks and Franklin for job descriptions and they had dusted off some earlier versions. Franklin's job description is in the Charter and Wilbanks' is in an ordinance, and collectively, they red-lined them because they didn't make sense; back under another person. They both thought that was a good way to break up the work; we have job descriptions that are pretty close. Council wanted to formalize those guidelines; we haven't done it yet but he thinks we are close. He spoke to Ken Small while attending the FLC conference; learned a lot and had a lot of sessions. Ken Small has been a city manager; he works for the FLC now. He said that everyone's budget has been cut like ours. Five years ago, Florida was taking in \$31 billion across all the cities and now it takes in \$24 billion. He stated with a town the size of Malabar, you really need a town administrator and a town clerk; you want those to be separate jobs. There are things that one of them does that you don't want the other one doing; you want separation of power. You can get into trouble if you are not doing that. He felt strongly about that; I asked for his opinion and he gave it to him. He also recommended to have annual reviews; at least the TA and the TC/T. Have them do a self-evaluation and give them to the employees; have the staff review the data; one at a time, we can't talk to each other. Then we can have an employee workshop to discuss what they are doing right and what they are doing wrong. He thinks that's; he talked to Wilbanks today and she's HR; it falls under her responsibilities. She thinking April/May time; she admitted that last year it wasn't done but it's time to do the review. But it's people, these two people help make our jobs a lot easier; he doesn't want to be in Town Hall 30 hours a week. He didn't sign up for this job to do that. In our charter, which he has a copy, it says that in the absence of a TA, the Council will be responsible for the direction of supervision of Town officers, employees and agencies. He doesn't want to take that on himself; he's 1 of 5.

Acquaviva stated that she thought the workshop situation worked well years ago. It's hard for the employees to speak in a public forum. It's not professional to do and call people out and make them speak about each other or anything like that. She doesn't want to micro manage that but she does listen to what's going on and she does think there are some problems. Maybe a workshop would be a great forum for that; we've done it before. She doesn't know if staff would be interested. Like she said, she's done the reviews; how many Council people do reviews in the last few years. Wilbanks stated that you and Rivet are the only two that have done them. Rivet stated that have not been done every year. Acquaviva stated that you can come back and say hey you didn't do this or this wasn't that great and they can know that you think they are doing great or not great or whatever. Some of those things on the check list, there is a review sheet; she didn't do it last year. We have a form; we just haven't been doing. She thinks it's unfortunate; she doesn't feel anyone should come under fire for saying that. It is budget time and she thinks that we are all; we need more positions because things are efficient here and it's like maybe what's here isn't efficient at this point. Maybe there's some kind of give and take on that.

Rivet asked if we have a proposed action on this. Acquaviva stated that maybe the workshop; she doesn't know if people are interested in that. To keep people up to speed, put their reviews; give everyone their review papers. Rivet asked what the workshop would address, the roles and responsibilities. Acquaviva stated the personnel issues as well as roles and responsibilities. She does believe, there is lobbying as she hears things and she tries not to go there because we are elected officials; we represent the people but yet your jobs do answer to the people. So want to be working pretty simpatico with each other but if there is a problem, which she thinks there is with some things that could be worked out.

There are budgetary things; there's not enough butts in seats at Town Hall and the phone isn't getting answered and one person is working too much. We hear this all the time. She's not comfortable throwing more personnel here; we need roads paved. If you look at our costs; we do spend a nice amount of change on our personnel here. They are strapped; we did take the water away and they don't deal with the water situation anymore and it's probably nice for you all. So she thinks that we can come to some kind of; in our budget strategy, she is not interested in throwing more money at this. She will say that. You do want clerks but that's the problem.

Mayor Beatty asked Milucky to speak then he would like to do a rebuttal.

Milucky stated, regarding the millage, the distance between the lowest millage rate this Council was presented with, which was the maximum millage rate; the difference to go to a 1.9 millage rate. We are not talking about personnel issues, we are talking about money. He believes the distance was increased in taxes in the budget expenditures by \$39,600. It was certainly \$39,000; his memory may not be, at this hour, what it normally is. So for sake of argument, let's say it was \$39,600. Even if we spent every last dime we are entitled to, and we took out the reserves or un-appropriated funds of \$64,000, it still came out to about \$100,000. It didn't come anywhere near the wish list of what we were told the Town needs, wants, has to have and to go back to where I started this, he asked the questions to tell about the health plan, what are the alternatives are and what can we do better. Tell him about the retirement plan; what are our legal requirements and what can we do better? Tell him about our physical equipment; buy, lease and used. Tell him what we should buy new, used or on a lease program. So yes to whoever said that I'm not a professional government council, but please don't insult me by saying I'm either not professional or experienced because I do resent that and he didn't just show up; he's been in town now sitting in my chair.

Mayor Beatty said we are getting close to a ***Point of Order***.

Milucky stated there were some personal attacks and they shouldn't have been allowed to continue. That is what he was responding to. We go back to the budget; even if we increased it to the maximum millage, that was \$39,000, and it wouldn't have covered all of the things that we were told we needed. He came up with an alternative solution to find additional funds and reallocate those funds to try to more efficiently run the Town of Malabar. He didn't see anybody pony up that was willing to do that. That's what he brought to the table and people are not happy with him. He will sleep good tonight. You tell him where your innovations are to run the Town. Let's move on.

Acquaviva asked Wilbanks about the administrator's time; she read the contract and couldn't find where it was in it. Wilbanks stated that it is in Compensatory time in section 2.01 she re-named it as admin time; as comp time is at time and a half and she didn't think it was fair to pay at time and a half. She stated that it's certain amount of time; I mean I work and I always hear that you see Debby's car here but I do a lot of the work that I need to do on my computer because I prepare Code, I prepare financial stuff that I am responsible for and HR stuff and all the fire department; all the applicants, I do their letters. I do that, sometimes at home through VPN into my files here. So the fact that you don't see my car sitting in the parking lot; I can tell you that you can go through my emails because I email the stuff back to record it or I send it out to people. You'll see dates that co-exist with the administrative leave slips that we do. The other thing, it isn't just a wish list; I turn in a leave slip just like Debby does and Tom for any time that they are putting in when they are actually considered off. So everything that we have is trackable and she will tell Council that she apologizes that you didn't get it last year. Normally they are put out; those performance

evaluations, to the staff members that are responsible for them in April. If you recall, I started chemotherapy in April and the rest of that time was very difficult and it completely slipped my mind and if Debby had of reminded me, I would have gotten that out. It's just something that slipped through the cracks when she was handling a lot of what I had to do. So I apologize to Council and to Mr. Milucky and Mr. Abare; you guys didn't even get the booklet that we normally give out. That comes we give that item out and that will be given to you tomorrow. I can send it electronically or in hard copy, whichever you would like, which also includes the form.

Abare asked the attorney, and he may be completely off base, but we can have a workshop and discuss this contract but our options are pretty limited. Bohne stated that no action can be taken. Abare stated that the point is the only way you can terminate her and pay her severance and her unused vacation and pay her ½ of her sick time and then ask for a new contract. But you can't just go in here and start changing stuff. Bohne stated it takes two to renegotiate a contract.

Rivet asked what is the action then. It's not clear to him. Abare stated that it's not clear to him. Acquaviva stated that her action was to deal with the personnel issues and because of the budget workshop, she thinks that asking for more clerks, that's something we have to decide upon as well. She thinks Jim's idea was this that we can do this. That's just an idea; we can work with our budget on our staffing and the problems and getting everyone up to speed on everybody's job descriptions are. And if there are problems with staff, get everyone in here and we just work it out and we say I'm doing this job and it's not really my job. Whatever that is, we can deal with it in a workshop and it's less formal and people aren't threatened. Rivet stated that she is asking for a workshop to discuss the personnel issues and responsibilities of staff here at Town Hall. We have done it before. Rivet asked if it makes sense to do it after the budget process. Acquaviva stated for them to tell her because how bad does staff want clerks.

Wilbanks stated that she hadn't spoken to Debby about this, but if you all thought the last workshop was not stressful for Debby and me, I don't know about her, but I'm sleep deprivation at this point. She sure hasn't been eating. So those two things in consideration, I already came to terms with the fact, and it's as I've said to you, the things that I was going to utilize that person for, I have already taken over and done myself, which has relieved the need to the assistant to the Town Administrator's office. I put it into my schedule; as was said at the budget workshop, it was done for about 30 days and I'm comfortable with it. I haven't asked Debby if she was comfortable with restructuring some of the responsibilities so that we handle it. The phone, we will continue to doing what we have always continued to do; when it rings; my problem is my phone doesn't ring in my office unless they are calling me directly. I don't hear the phones like everyone else because their phones ring for all of the outside lines. So maybe getting a phone that will ring in my office so that I know that it's ringing; if I don't see the flashing light so I don't know that it is. But the other side to that is I'll sit and talk with Debby, but other than the PW person that you told me to add and the suggestions, but really direction, to go out for the accountant and the auditor. We can't go out for the auditor because he has one year left on his contract. She felt that those negated going out for any additional staff. If Debby felt differently from that, I don't know because we really haven't communicated on that. But she does know that PW staff, you all said to go and put those numbers into the budget. So she feels comfortable; as far as I'm concerned, I'm not going to be using this person. So if you are adding it, it's going to be added for the front end person. Acquaviva thinks adding the person brought up this situation. Rivet stated that we are talking about the budget issues. Rivet stated these are details that need to be discussed in the budget workshop. So let's do that at the next budget workshop.

Wilbanks needs to know if Council is still going to go forward or if it is still being entertained that Council is going to disband the Executive Department would be something humanly I would like an answer to. It's nice to say that we will discuss or we'll throw it out there. But folks, I'm a human being and if you're going to consider that and you're seriously considering that, I need to know that because I've just got, literally, a month and a half to put resumes out. And if that's where this is going, then I will do that. But I think that; we have one Council person that made that suggestion. Is that going to be entertained situation at this point? Rivet asked Milucky to address.

Milucky stated that he brought it up. He knows that she's trying to get a consensus from Council. He doesn't speak for Council; he speaks for vote on Council. He's read the agreement; it's a contract at will. It says you are paid three months' severance and certain stipulated things. While you may think it's appropriate, and Council is welcome to respond, I didn't make a motion. This was not, this discussion item was never intended to get you to either quit or be replaced. But it's the only vehicle that this Council has to discuss your employment contract. It didn't happen in April or in the prior April. He can't speak to all of those years. He can only speak to the time that he was elected. That's why we are talking about it and it's an uncomfortable; it's darn uncomfortable, but I'm not the one who made the rules for the public forum. If you were my employee, I would have called you into my office and we would have talked about it. But you are not my employee; you are the Town's employee and we are representatives elected to manage the Town. I don't know of another way to discuss it. I have not brought up any, any performance issues. All he did was approach this as a monetary standpoint. So you can poll Council if you choose; but please understand while you direct whatever it is you are directing this way, one of it was ever given your way. While it is uncomfortable, I came to Council with alternative way to run the Town. Yes, it directly involves you because, legally, I can't do anything with the Town Clerk. We have to have a town clerk.

Wilbanks stated she is not giving you feedback concerning that you brought it up to take an action on me. That is not, but what she is asking Council, if Council is going forward with eliminating that department of \$112,000, then if that's not what they are going forward with, then we can go forward with making; doing the changes as directed on the sheets that we are going to present to you. If in fact, they do want to entertain that, then we put different set of sheets together. So as much as you are not directing it at me, that is where I'm coming from. It's not personal to the point that I'm saying you're trying to fire me tonight. Maybe you are; I don't know, but I didn't get that impression. But I do need to know what to put on the numbers and the numbers on that department are pretty well defined unless this Council is entertaining doing away with the Town Administrator's position; not mine, the Town's.

Mayor brought something back by one individual to eliminate a line item or page of the budget to have more money; shift money to this person; give this person more authority, whatever. But that was only one person. I didn't see or hear anybody say that's a fantastic idea. We are talking about going to workshop and re-distributing; part of it's going to be re-distributing the work load; defining who does what so we don't have that clash. We had an issue; remember the BOA, we had some issues and I don't know whose fault that was. But that's one of the things that needs to be looked at. If it goes through the wrong steps or causes a problem we need to change that. So I'm saying we need the workshop, we need to re-evaluate our employees as far as what they should be doing or not doing and eliminate the conflicts because we are responsible for the situations going on right now. Rivet stated that we are going over the same things.

MOTION: Abare / McKnight that we leave the Town Administrator's budget as is for the next budget workshop.

VOTE: Abare, Rivet, McKnight & Acquaviva, Ayes. Milucky, Nay.

Motion carried 4 to 1.

8. Require RFP for Accountant Services if over \$10,000.00 (Milucky)

Exhibit: Agenda Report No. 8

Recommendation: Request Approval

Discussion: Rivet asked Milucky to speak to this as he brought it to Council. Milucky would like to have all personal services contracts sent out to bid if they are over \$10,000 annually.

MOTION: Milucky / Abare to require personal service contracts be sent out for bid if over \$10,000 annually. VOTE: Rivet & Milucky, Aye; Acquaviva, Abare & McKnight, Nay.

Motion failed 3 to 2.

9. Require Invoices from Engineer to be submitted promptly (Council)

Exhibit: Agenda Report No. 9

Recommendation: Request Approval

Morris Smith stated that this has been his error, staff has continually asked for invoices. He has a software program he's not fond of but he will submit an invoice with every memo submitted for inspections completed; he said he will not hand in a report without an invoice. Mayor Beatty stated that we have a resolution to this issue.

K. PRESENTATIONS:

I. PROCLAMATIONS:

L. STAFF REPORTS:

ADMINISTRATOR – TA reported that we have resolved the well issue on US 1; we have assurance that there is no compromise under the road. The ditches on Malabar Road are not being done; it's a state road and DBI is using prisoners for the work. They can't do this with water in the ditches for safety reasons.

CLERK – Candidate Qualifying ends on Wednesday. Dick Korn has qualified for Dist 4. Marisa has for District 5.

N: DISCUSSION ITEMS:

O: REPORTS – MAYOR AND COUNCIL MEMBERS (number indicates in which order they spoke)

- 1) Mayor Beatty – FLC conference; learned too much and wants to integrated some things to Council. The private road sign appeared and the stop sign disappeared. Township sign disappeared and it should be put back; Franklin stated that it's on the next agenda.
- 2) Jim Milucky – nothing
- 3) Wayne Abare – FLC conference, thanked Town for sending him; has a 2 page summary he will submit.
- 4) Steve Rivet – address the Robert's Rules, some improvements we can make; he will let the public and Council speak. He asked how many people on Council read the entire book; Franklin and Rivet have. McKnight suggested the abbreviated version
- 5) Jeff McKnight – nothing and Pineda Causeway is now open with the new bike lanes.
- 6) Marisa Acquaviva – will have the Candidate Qualifying packet in tomorrow; personal issues have arisen.

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

Brian Vail, 2700 Smith Lane, came forward and addressed Council regarding the meeting decorum that he spoke to earlier in the meeting. We don't need to be strict but Council needs to be more mindful of the way the meetings are going. McKnight was in agreement with Vail.

Gary Crane, of Township Road, came forward and addressed Council regarding the speed limit for this road. He requested that the speed limit sign be put back up that was taken down.

Q. ANNOUNCEMENTS:

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: Acquaviva / Abare to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:30 PM.

BY: Carl A. Beatty
Mayor Carl A. Beatty

ATTEST BY:

Debby K. Franklin
Debby K. Franklin, C.M.C. :

TRANSCRIBED BY:

Cynthia Kelley
Cynthia Kelley
Deputy town clerk:

Date Approved: 9/16/13
Town Clerk/Treasurer

(seal)