

MALABAR TOWN COUNCIL REGULAR MEETING

April 06, 2015

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 7:34 pm by Council Chair Mayor Carl Beatty. CM Krieger led the prayer and pledge.

B. ROLL CALL:

COUNCIL CHAIR:	MAYOR CARL BEATTY
VICE-CHAIR:	MARISA ACQUAVIVA, excused
COUNCIL MEMBERS:	GRANT BALL
	BRIAN VAIL
	DON KRIEGER
	DICK KORN, excused
TOWN ADMINISTRATOR:	BONILYN WILBANKS, excused
TOWN ATTORNEY:	KARL BOHNE
TOWN CLERK/TREASURER:	DEBBY FRANKLIN, excused
DEPUTY TOWN CLERK:	CYNTHIA KELLEY

For the Record, the Fire Chief Christopher is also present.

C. ADDITIONS/DELETIONS/CHANGES: Chair stated that the Sheriff is here and we will move his report up to the front so he doesn't have to stay for the entire meeting. We will then hear from Randy Perry with his presentation as he is from Orlando.

At this time. Lt. Brett Nicholas gave his report from BCSO.

G. BREVARD COUNTY SHERIFF'S OFFICE REPORT: Lt. Brett Nicholas came forward; there is nothing too significant to report except that they will be putting together a 90-day operation to address the ATV activity complaints received in Grant Valkaria. Other than that, nothing else to report. They have received several complaints regarding partying, drinking and under-age drinking along with ATVs. Bohne stated this started with Grant Valkaria; they had a meeting to brain-storm to come up with solutions. It would seem that the non-residential intruders are doing this. The BCSO has been asking the "clubs" for their assistance in getting information about this activity. People are being told to call 911 if they hear anything going on. BCSO is going to beef up patrols to address this. Vail stated that he has called BCSO and escorted them to the area of the activity as it is along the back lot line of his property. Bohne stated that BCSO wants to hear from people; it is not a bother to them at all.

Chair asked if BCSO is watching the area on US 1 where the crosswalk has been put in. There have been a lot of changes; it can get confusing. Lt. Nicholas stated he was down there and understand the confusion; he will look into this. Chair stated that people are crossing and trying to beat the traffic. Lt. Nicholas stated that if someone is in the cross-walk, you are supposed to stop as it is the law. Chair stated that he is hoping BCSO is monitoring the area more. Krieger stated that people see the "stop" sign that really isn't a stop sign at all; it causes them to react, not necessarily in a good way.

H. PRESENTATIONS:**3. Presentation by Website Hosting Vendor: Audio to Website by Randy Perry of E-City Services**

Randy Perry of E-city Services came forward and made his presentation. He provided a price sheet for audio streaming and video streaming. He then gave information regarding the audio streaming of the Council meeting. He stated that Ponce Inlet does the audio streaming with the agenda linked to it. While the meeting is taking place, someone sits at and writes the beginning starting point for each agenda item. Doing this lets someone go to the exact point of what they want to hear without having to go through the entire council meeting. The City of DeBary does live meetings; video on demand, a camera would be set up facing the dais and everyone would be seen and heard.

Krieger how does the information relate to the charts. Perry stated that the cost for audio streaming is \$795 per year; this allows for unlimited streaming, listening and the information is stored for 5 years. The \$1495 is for video streaming which is video on demand. He gave information for providing separate servers for audio and video streaming; 180-300 MB is the most size of a meeting being downloaded. Krieger asked why not take a MP3 player recording and put it out there.

Mayor Beatty asked if the \$795 will give the indexes for the meeting. Perry stated, again, it would include unlimited streaming, listening and 5 years of storage. Ball asked how it is taken care of after 5 years. Perry stated that the server isn't the place to keep all of your information; it should be kept off site at another area.

Vail asked about the video capability; stated we did it a few years ago. Perry stated that was a free service; meant that there advertisements during the meeting and it's usually products you don't want advertised. Krieger asked about the management of the Town's website. Perry stated the management of the website is up to staff; they are trained to maintain the site and they each have their own passwords to access the program. This is something that e-City monitors very closely.

Krieger asked about the email; can anyone of the board/committee members along with Council can have an email at Town Hall with a password. Perry stated that at this time, e-City Services doesn't handle the Town's email accounts; it is handled by someone else. Bohne asked if the audio can be saved for public records purposes. Perry stated that they should already be saved locally before loading it to the server. Kelley stated that this is being done.

Mayor Beatty stated that the price is good for what they are providing. If Council could have an email here at Town Hall it would be a lot easier and we could answer through that email. If someone receives something at their personal email, forward it to their account at Town Hall. Krieger asked about the emails and if it would be better to have one place taking care of this. Perry stated that whoever is maintaining your email needs to be archiving it to the laws of public municipalities.

Vail asked about the next step up for \$500. Perry stated it's for \$1295 a year and it provides the equipment. Vail thinks going live would be advantageous; he asked how soon it would be loaded onto the system to be viewed. Perry stated it would be done probably in the morning. In the best of circumstances, it should be done by noon the next day. He also stated that if the Town wanted

to start out with audio streaming and then upgrade to the video streaming, it would be able to be done and the price would be prorated.

Mayor Beatty stated he is interested in the email portion of this presentation; there is a situation happening right now with having to provide emails sent to Council members at their personal emails. Perry stated that the set-up fee is \$1000 and \$5/month per account. Mayor Beatty asked that Perry put together the condensed fee information that was discussed tonight so the people who aren't here will have it. Perry stated he will put it together and email it to Wilbanks.

Ball asked how it would work if he was no longer on Council. Perry stated that his account would be closed but accessible to pull information if needed. A new account would be set up for the new person on Council; they would have the same email address but with a different password.

This item will be placed on a future agenda for action at a later date.

D. CONSENT AGENDA: none

1. Approval of Minutes

Regular Town Council Mtg – 3/2/15, 3/16/15

Exhibit: Agenda Report No. 1

Recommendation: Request Approval of Minutes

MOTION: CM Krieger / CM Vail to approve the minutes of March 2, 2015 with noted correction.

Discussion: This is the set with the verbatim on pages 6, 7 & 8. It is what we asked for at the last meeting. Page three at the bottom; a sentence where Krieger is speaking of the 20%. Ball stated it didn't make sense. Krieger said he understands what it is about but it doesn't look like it can be changed. Pages 6, 7 & 8 are verbatim minutes as that is what Council asked for. It may be that we need to have the tape listened to so we know what was said. Kelley stated if it's part of the verbatim, she already listened to the tape. Krieger stated this isn't part of the verbatim minutes. Krieger wants taped listened to so minutes can be clarified on bottom of page 3.

AMENDED MOTION: CM Krieger / CM Vail to table until page three is made clear. **VOTE:** All Ayes.

MOTION: CM Krieger / CM Ball to approve the minutes of March 16, 2015 as presented.

Krieger stated that on the last page, page 6, regarding unexcused absences for Bud Ryan which she spoke to on page 4. There isn't much you can do about it; it's what was said. I don't really have a correction for this. Bud Ryan asked to speak to this. Chair stated he was out of order; Council is going over the minutes and it would be up to Council to hear him. Ryan said never mind. Krieger stated he didn't really have a correction for this; we have a motion and a second. We can correct this later on. We can't correct these minutes but if it comes up again, we can address it then. Krieger called the question. **VOTE:** All Ayes.

E. PUBLIC COMMENTS: Comments may address items that are not on Agenda Items. Comments related to subsequent agenda items may be made prior to Council action on such items. Public Comments do not require a Council response. (Speaker Card Required) **Five (5) Minute Limit per Speaker**

F. ATTORNEY REPORT: Bohne stated he was going to talk about the beefed up patrols in Grant Valkaria. It is the EELs; they are not posting their property so it makes it very hard to prosecute violators. No one knows whose property it is. The BCSO will make a reasonable question to the violators; if they find things that are illegal, they will take care of it properly. But, because the property isn't posted, it is very hard to go after trespassers.

G. Heard at beginning of meeting prior to Consent Agenda.

H. Heard after Sheriff's report prior to Consent Agenda.

I. **PUBLIC HEARINGS: 0**

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

2. **Request from Resident Patrick Reilly: Discuss Mayor's Veto Power**

Exhibit: Agenda Report No. 2

Recommendation: Request Action

Discussion: Pat Reilly, 1985 Howell Lane, came forward to address Council. He is seeking support on removing the veto power of the Mayor and to not have him vote to break tie votes when a Council Member is not in attendance. Mr. Reilly went through his presentation. He randomly chose municipalities that were our size looked at their language in their charters to see how they addressed veto powers of the Mayor. 85% didn't have any language about Mayor's veto powers; 13% had language to "not allow" Mayor's veto powers. Both Hialeah and Hialeah Gardens were the only two municipalities that have language to allow Mayor's veto powers; they are both Strong Mayor-Council forms of government. We are Strong Council Weak Mayor form of Council. He did a google search to support what he is trying to do. This would need to go to the voters as a referendum at the next election. Giving these powers to the Mayor is not a Strong Council Weak Mayor form of government. The Mayor vetoed three ordinances in 2014; Council has the power to rescind the vote at the next Council meeting. You wouldn't need the Mayor to have veto power.

Mayor Beatty asked to respond to this; he has a different view. The Charter has this in it; it was voted on by many people. There is a town south of here that does veto; the state of Washington, referred to by Reilly in his research, doesn't have anything to do with Malabar or its business. Point of Order was called by Krieger; he asked if a vote needed to be taken before discussion. Bohne stated it could be discussed. With regards to the Mayor breaking a tie vote, this was done so that business could go forward and not hold up the business of the Town if a Council Member was not available for the meeting. The Mayor's veto power is there and has been there for 52 years. It has been used four times; all by Mayor Beatty. (Clerk's Note: Ord 4/1/1977 created the veto authority (38 years ago) and was used by Mayor Yust in 1979 when he vetoed the rezoning of the Scabarosi property and Mayor Beatty in 1986 when he vetoed the rezoning of the Gentry property).

Vail stated that Reilly would like this to be on an agenda with a full Council for discussion. Bohne stated that Reilly wants this to go to the voters in the form of a referendum. Mayor stated that the whole rationale for the tie vote to be broken and to move business forward for the Town.

Krieger stated that he tends to be against charter changes. He doesn't see the arguments support Reilly's request. Reilly was going to make a comment to Krieger and was told "I didn't ask for comment from the audience". The checks and balances we have are good. Having two weeks to give Council time to review the information is good. If it were up to Krieger, he would allow the Mayor to veto resolutions as well. He would rather have the Council Members represent their districts and vote in their districts; let the Mayor represent the town as a whole. Krieger's opinion is that change is usually bad.

Mayor Beatty stated that taking the votes from the boards/committees and the looking at the votes of Council is not the same; you can't do that. There have only been four vetoes in 52 years. They

were not maliciously done; they were thought out. With regards to the budget adjustment (amendment) veto, Council didn't even attempt to over-ride that veto.

(Clerk's Note: Budget Amendment Ord 2014-17 was on 11/17/2014 agenda for override and was much discussed but did not get the 4/5 vote of council required to override)

Bohne asked if the people present on Council this evening wishes to have this as an action item on the next agenda so a full Council can discuss this is what they want to do. Vail stated that this should be done so the full Council can discuss this. Ball asked how much it would cost for a special election if we didn't have a general election in November. Bohne stated that it could cost in the neighborhood of \$8,000; Malabar doesn't always have their election as the candidates are unopposed. If we do have one, it would go to the voters as a referendum and it would be a lot less than a special election. *(Clerk's note: Malabar has never paid \$8,000.00 for any special election. During the last 38 years we had a need for one special election once in the 1980's. In 2012, with 3 elections and 7 referendum questions we paid \$1,754.29.)*

Mayor Beatty stated that we had referendum questions come before Council to change the terms of the Council members and for the Mayo's term. The full Council decided nay on this. *(Clerk's note: Ord 201410 was approved 5 to 0 and 4 to 0 in July 2014 proposing 3-yr council terms.)* This issue is being brought to Council by one person. Ball is against spending money to fix this. Krieger stated is there is any other interest, someone else will bring it up in the future.

Bud Ryan, neighbor to Pat Reilly. Came forward to address Council. He takes a 100% opposite opinion to this. He said we need to treat this as a Presidential veto; it keeps bad laws from being put on the books. If the Council doesn't like the veto, they can over-ride it. If this comes up again, he will fight it tooth and nail.

Vail stated he wants this on the next agenda for a full Council discussion. Ball stated he doesn't want to spend funds to fix something that doesn't seem to drive the town. He doesn't want this on the next agenda to spend funds to fix something that isn't broken. Krieger feels that running to change the charter every year isn't good; we can fix things by policy changes. He stated that Mr. Reilly can do a petition and obtain 300 signatures and bring it back to Council if he chooses to do so. This will not be on the next agenda for a full Council discussion. At this time, no Council action was taken.

At this time, the presentation from Randy Perry was heard after the Sheriff's report.

ACTION ITEMS:

MISCELLANEOUS:

4. Approve 1st Mtg of month with Attorney; 2nd Mtg without (Mayor)

Exhibit: Agenda Report No. 4

Recommendation: Request Discussion / Action

Julianna Hirsch 1035 Malabar Road, came forward to speak, she is not for it to have the attorney here for just one meeting; she requested this to be postponed until a full council is present. With regards to the veto, three of them took place within a very short period of time. However, the attorney needs to be here as he is here for the people.

Mayor Beatty said he will speak and then Council can vote to postpone this item. He stated that we would do prep things and then have the attorney present to conduct the business that had been prepped for. He will postpone this item until we have a full Council.

Ball stated that if the attorney had not been here this evening, he would have had to call him to speak about a situation; there would have been a charge to the Town for the phone call. Krieger stated that things happen sometimes after he leaves the meeting. It may be that you want flex time that he's here for the second meeting one month and at the first meeting another month. It's hard to schedule it this way.

Vail stated that without Bohne here, it's hard to find information out. Krieger stated that this would be the time to write your questions down and ask at the meeting he would be present at. Ball stated that what Krieger is kind of proposing would be a round-table discussion and then have Bohne at the next meeting. We would be able to get through things quicker. Mayor Beatty stated this is just a proposal; he will do everything he can to move things along after Bohne leaves for things he doesn't need to be here for. He put this on the agenda to save time and fund the next agenda item on tonight's agenda.

Krieger stated to have the first meeting in May as the business meeting and the second meeting, which is close to a holiday, as a round-table discussion. Mayor Beatty stated we have budget workshops without the attorney being present; we can operate on our own. Krieger stated that it would come with setting up the agendas as to when the attorney will be present and when it would be a round-table discussion. If we are not forced to make a decision that night, it helps the thought process.

Ball asked to hear from Bohne on this. Bohne stated that Council should not limit themselves from action items at the non-attorney meetings. This needs to be weighed out; there will be savings but he's not sure how much. If he's not here and something comes up, he will do the work at the office. It could be cheaper; he charges for travel to the meetings. He's been here almost two hours and he's spoken for about a ½ hour. With the exception of the special meeting in GV, he hasn't been to a Council meeting in two months/. He charges them more money but he doesn't sit all the meetings. Bohne stated that he has told both Wilbanks and Franklin to call if something comes up; even if it's during a meeting. He will answer the question(s). This will be placed on a future agenda for discussion/action for the full Council.

At this time, no action was taken on this agenda item.

5. Approve that only the Attorney will Draft Ordinances & Resolutions (Mayor)

Exhibit: Agenda Report No. 5

Recommendation: Request Discussion / Action

Discussion: Bohne stated that staff can do the budget resolutions. Anything to do with policy/procedure/informational should be written by the attorney. Sometimes, he has to write an ordinance over again. He doesn't need to do anything to do with zoning ordinance either. If it is house-keeping or adopting something similar cities have done, he doesn't need to write these either. Some things can be done in house to save funds.

Vail stated he doesn't want every resolution going to the attorney. We need to know what we can do in house as long as we are not getting in over our heads. Staff can do some of these. Krieger stated that a policy in place giving direction to who does what regarding ordinances and resolutions. He wants to see and be made aware of every ordinance that is being written. He also stated that staff needs to ask if an ordinance should be written and it should be asked at a Council meeting.

Julianna Hirsch, 1035 Malabar Road, came forward and addressed Council. She asked Chair Beatty why the change all of the sudden? Who has been writing them for the last 20 years?

Mayor Beatty stated that he felt the attorney has been left out of the loop. Mrs. Hirsch stated that it is her understanding that staff writes the ordinances and resolutions; it is then given to the attorney for his review. Bohne stated that he doesn't always get the ordinances. When he does, sometimes he has to ask himself if he needs to re-write it or can we work from what was given to him; or can he fix what was given to him. Does it mean that the Town doesn't get the best product; he has to say yes. Staff does a good job but it isn't always what the Town really needs or wants.

Mrs. Hirsh came right out and asked if this is a vendetta against staff? The information gets drafted by staff and reviewed by the attorney. Why the constant messing around with staff? Bohne stated that it doesn't always come to him. For the most part, it's been okay but there have been somethings that should have come to him for review or writing. Mrs. Hirsch stated that this is a bunch of crap; she apologized for her language, but stated that enough is enough already stating that the ladies at Town Hall all work very hard. She wants this on an agenda for a full Council discussion.

MOTION: CM Vail to table discussion until we have a full Council. Motion to table failed due to lack of a second.

Krieger stated that what he just heard is that the direction comes from Council to staff and goes to the attorney. Ball stated that we need to put this on the next agenda with a matrix so that it makes sense to Council. Krieger stated this would be a good topic for a round-table discussion.

At this time, Council took no action on this agenda item.

Attorney Excused @ 9:40 PM; 5 minute recessed call by Chair Beatty. The meeting was called back to order at 9:46 pm.

RESOLUTIONS:

6. Budget Adjustment – Reso. 06-2015

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2014-2015; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Request Approval of Reso 06-2015

Discussion: Ball asked to have this process explained to him. We work on budget workshops to approve the budget; he doesn't want to vote on something he doesn't understand. Krieger stated we don't have the Town Administrator; Vail explained that this is a budget adjustment for the Fire Department only. They are all in the same department; they are moving funds from line items in the department to cover expenses. Things happen during the year; costs go up, things break and need to be repaired. Most of the time, the departments stay within their approved budgets, however sometimes adjustments need to be made to cover an overage or an unexpected expense.

MOTION: CM Vail / CM Ball to recommend approval of Reso. 06-2015 as presented. **ROLL**

CALL: 1)CM Ball, Aye; CM Vail, Aye; CM Krieger, Aye; CM Korn, excused; CM Acquaviva, excused. MOTION carried 3 to 0.

K. PROCLAMATIONS:

L. STAFF REPORTS: ADMINISTRATOR – excused

DEPUTY CLERK- Springfest was a success; staff did another tremendous job.

Mayor Beatty stated that if Korn wants a booth again next year, it needs to be away from the band as he couldn't hear. Kelley stated that now that she knows that, she will place him a few rows back. Ball stated that he enjoyed the event; however, he has an issue with the money spent for the insurance for the event to sell beer. Council needs to look at this. Ball stated that we are not spending \$8000 for a referendum and we are throwing away \$1400 for insurance to sell beer when we don't even sell that much. With what is sold, it doesn't make sense and it's not even needed based on the information provided. Mayor Beatty stated that a final spread sheet with all the figures will be coming from the Town Administrator; workshops is the place to discuss these issues. Ball stated it would be better if he donated a keg of beer to the Town and they gave it away and put a "donation" cup at the booth.

Krieger asked about the old/new business portion of the agenda. It was said that this comes up in reports; we can discuss the information shared in this area.

M. DISCUSSION ITEMS:

N. REPORTS – MAYOR AND COUNCIL MEMBERS

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

P. ANNOUNCEMENTS:

Two (2) vacancies on the Board of Adjustment
Three (3) vacancies on the Park and Recreation Board
Two (2) vacancies on the Trails & Greenways Committee
One (1) vacancy on the Planning & Zoning Board

Q. ADJOURNMENT:

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

MOTION: CM Vail / CM Krieger to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:10 PM.

BY: 

Mayor Carl Beatty, Council Chair

(seal)


ATTEST BY:



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

Date Approved: 4/20/15 AS CORRECTED

TRANSCRIBED BY:


Cynthia Kelley, C.M.C.
Deputy Town Clerk

Debby Franklin

File w/ 4/6/15
mjd

From: dickkorn <dickkorn@bellsouth.net>
Sent: Wednesday, March 25, 2015 10:50 AM
To: Carl Beatty
Cc: Debby Franklin
Subject: My absence at April 6, 2015 RTCM

Mr Chairman/Mayor

I try never to miss a scheduled Town Council Meeting. However, I have an unresolvable business conflict for Monday, April 6, 2015.

Therefore I request that my absence from this meeting be excused.

In the interest of fairness to all, I request that any action and/or discussion of the annual performance review of the Town Administrator be deferred until I am in attendance at a meeting. I feel a strong responsibility to the people of Malabar to participate in such discussions and actions. Barring any unforeseen happenings, I expect to be present for the April 20, 2015 meeting.

I also ask that an Action Item be added to that agenda immediately after the Performance review. That action item should be the question, "/*Shall we retain the current Town Administrator in this position for another year?" */My reasoning for this is that it is a natural follow-up to the performance review and will put to rest any questions and rumors.

Respectfully,

Dick Korn
Malabar Town Council
District 4

This email has been checked for viruses by Avast antivirus software.
<http://www.avast.com>