

MALABAR TOWN COUNCIL REGULAR MEETING

April 20, 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 7:30 pm by Council Chair Mayor Carl Beatty. CM Korn led the prayer and pledge.

B. ROLL CALL:

COUNCIL CHAIR:

VICE-CHAIR:

COUNCIL MEMBERS:

TOWN ADMINISTRATOR:

TOWN ATTORNEY:

TOWN CLERK/TREASURER:

MAYOR CARL BEATTY

MARISA ACQUAVIVA

GRANT BALL

BRIAN VAIL

DON KRIEGER

DICK KORN

BONILYN WILBANKS

KARL BOHNE

DEBBY FRANKLIN

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

C. **ADDITIONS/DELETIONS/CHANGES:** Acquaviva asked Mayor about the seismic testing information he was going to provide so they could consider the resolution. Mayor said his computer has a virus and it was in one of the emails he sent clerk. CM Krieger asked about changing Action Items 2 and 3. CM Acquaviva said it is their duty as Council Members. CM Korn said it is the performance of the last years' activities they are reviewing. CM Korn asked TA and she said it was up to Council. Mayor said he is hearing to leave agenda as it stands.

D. **CONSENT AGENDA: none**

1. **Approval of Minutes** Regular Town Council Minutes of 3/02/15 as clarified
Regular Town Council Minutes of 4/06/15

Exhibit: Agenda Report No. 1

Recommendation: Request Approval of Minutes

MOTION: CM Acquaviva / CM Vail to approve the minutes of March 2, 2015 with clarification.

Discussion: Corrections: Pg 3, Chief's sentence needs finishing. Pg 6, sb 1:00.

VOTE: All Ayes.

MOTION: CM Korn / CM Vail to approve the minutes of April 6, 2015 as corrected.

Discussion: Corrections: Pg 2, sb 300 not 30, Last sentence – put out there sb on the website.
Bottom of same page – clarify website and email.

VOTE: 4 Ayes; 1 nay (Krieger).

E. **PUBLIC COMMENTS:** Comments may address items not related to 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

Juliana Hirsch, 1035 Malabar Rd., these comments don't address any agenda items. She talked to an FDOT person Mr. Marks and was told that the intersection improvements at Corey

and 514 and Weber and 514 are not now funded. We have been told all along that the two intersection improvements were separate from the widening project and had been determined to be necessary and were funded through construction. Now they have changed position on funding. She thinks we are being put on the back burner and those funds are being put towards another project. She said they think we are all sleeping. She asked TA and Council to stay on this with FDOT.

CM Acquaviva said there are surveyors on Corey Road and CM Korn said they were on Weber last week. TA will get with Mr. Kamm and put response in FYI and also let Hirsch know.

F. ATTORNEY REPORT: Painted Acres suit, still trying to settle and the three individuals have been dropped from lawsuit.

G. BREVARD COUNTY SHERIFF'S OFFICE REPORT: none

H. PRESENTATIONS: 0

I. PUBLIC HEARINGS: 0

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

ACTION ITEMS:

2. Annual Performance Review of Administrator

Exhibit: Agenda Report No. 2

Recommendation: Request Discussion / Action

Speaker Card: Steve Rivet, heard about the memo she submitted and wished her well. The people who care about the Town will miss her. She has been professional, ethical and held up under trying times. He regrets she has had to work under the recent conditions. He hopes the next TA will not be subjected to the same treatment.

Discussion:

Mayor said he was under impression that since she submitted the resignation memo then the performance review was mute. CM Vail said he also thought that but still thinks the evaluation should be done. He does intend on completing it and turn it in. TA said that she verified with the Clerk and only CM Acquaviva had turned one in. CM Vail apologized for not having it done but he was out of Town. CM Korn said he did his and will give it to Clerk. (Handed it to Clerk) He did his without looking at last years. Surprisingly, he came up with about the same score. He thinks there was improvement with her relations with others from last year.

CM Korn then said Council needs to discuss difference between Manager and Administrator. Don't have Mission Statement or a Strategic Plan. All these things need to be discussed.

TA said prior TA had left no paper, no records. She had to go to his Admin Asst Sharon but she didn't have much either. CM Korn said it is a shared blame, we have no focus; we need to come up with focus before we bring in someone else. CM Korn said we need to work on who we are and where we want to be.

CM Acquaviva said point of order; getting off point of agenda item. CM Acquaviva said we are elected and represent all of the people of Malabar. It is part of your duty to do these

evaluations; so residents can see what you've done. That is what is important; you can say what you want behind someone's back, but here you are required to write it down and speak to it and own it.

Mayor suggests tabling this to the next meeting so they can all complete the evaluations. Consensus to move on.

3. Town Council Accept Administrator's Memo dated 4/2/15 (Korn)
Exhibit: Agenda Report No. 3
Recommendation: Request Discussion / Action

Discussion:

MOTION: CM Korn / CM Acquaviva to accept TA resignation as of August 19, 2015.

Discussion: Atty Bohne said CM Krieger asked him to write a one page resignation letter and have TA sign it. He (Atty) does not want to present it as the other Council Members have not seen it. The TA has not seen it either and he (Atty) doesn't want to look like it was done down and dirty. CM Acquaviva questioned why Atty did this document at request of one CM. She asked doesn't all of Council direct Atty? Atty said any one CM can ask him to do something, but all of them need to approve the action.

Atty said they should amend motion to reference the contract and state what she will be entitled to as far as benefits go.

Clerk Franklin said she did not want to deny TA anything but had to go on record with the caps (limits) on the benefits. While handling the compensated absences for the audit the auditors recalculated using the caps on everyone for vacation and sick time and no value for Admin time. She will abide by what the Attorney determines but had to let Council know.

VOTE: All Ayes.

4. Approve that only the Attorney will Draft Ordinances & Resolutions (Mayor)
Exhibit: Agenda Report No. 5
Recommendation: Request Discussion / Action

Discussion:

MOTION: CM Korn / CM Vail to continue with same process unless there are no action items; then the Atty can be excused from attendance.

Discussion: Mayor said GV doesn't have Atty at most of their meetings. Mayor said the 2nd mtg in March should be the start on the budget process going over capital improvement items. The CIP should be updated every year. One year they called it a wish list. One item on the CIP was wells and we haven't put in one. CM Korn thought TA Booth did a vision statement before he applied to SW Ranches for employment.

CM Acquaviva said she wanted the Atty there at every meeting where we take action. He has never attended any of the budget workshops. CM Korn agreed with CM Acquaviva. If we are going to conduct business then the attorney should be present.

CM Vail said we get packets on Weds. And if he is suggesting the 2nd meeting for discussion and there is nothing on agenda needing his attention or input; then he would agree with Mayor.

Clerk Franklin said she had recently listened to the Palm Bay Council meeting and they did the proclamations and certificates of appreciation were done with everyone present; attorney, staff, residents, etc. They made it an important part of the meeting. They did not treat it like fluff. Franklin thought it was important to give accolades in public.

CM Acquaviva said that we already have him leaving early from meetings. She likes working meetings. The residents deserve to have their business handled and not put off for weeks. CM Korn agreed the proclamations are not fluff but they are not business. CM Vail asked how much the Town would be saving if he didn't attend one meeting. What if they had to call him during a meeting he wasn't attending? CM Krieger said if we are going to ask him to come for 15 minutes then he may as well stay here. CM Ball said we need Atty Bohne here. He can intercept Council before they go down the wrong road. They have a better chance of avoiding lawsuits by having him present.

CM Acquaviva asked Mayor and Council if they are prepared to tell the residents they have to wait weeks because the Council is having a non-action meeting.

VOTE: 3 Ayes; 2 Nays (Krieger and Ball)

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

Exhibit: Agenda Report No. 5

Recommendation: Request Discussion / Action

Speakers Card: Wayne Abare, previous Council, lives on Rocky Point Road. He doesn't know why this is on agenda. Staff typically drafts the resolutions and ordinances and then forwards to the Attorney. They work together. Also, he mentioned that even with the Attorney present we have still found ourselves in lawsuit.

Juliana Hirsch, agreed with Mr. Abare. She then read from minutes of 1987. Back then all the questions were funneled through the Clerk. She said they each have a copy with the Attorney's bill. She also said Bohne said he doesn't attend many of those GV meetings but he does charge them more. She asked Mayor why all of sudden is he trying to change something that isn't broke. She said the dissention between the Mayor and staff has to stop.

CM Acquaviva said she was here today to sign checks and saw the most recent bill from Atty Bohne. She asked Clerk to copy it out so they could all see that the bill has gone up dramatically due to individual calls to the Attorney.

CM Korn said he wanted to cover himself re: the public records request. CM Korn liked what Mayor had said as far as trying to save money. CM Korn had no problem with Mayor Beatty's ideas but also had no problem with Clerk doing the draft and forwarding to Attorney for review. This would make what they do now a policy directed by Council.

Attorney Bohne said there has been lack of guidance to staff throughout the years. Atty recommended they strike a balance here. CM Vail said the boiler plate stuff does not need to go to atty. This was described as the appointment resolutions where you just change the name of applicant and Board. Same thing with Ordinances for rezoning; change legal description and the zoning designations. CM Vail said staff (Clerk and Attorney) know what is critical and what isn't. CM Vail said Attorney is correct that Council needs to give better guidance to staff.

MOTION: CM Korn / CM Acquaviva to direct staff to coordinate with Attorney all ordinances before the first reading.

CM Krieger said the motion is for the status quo. CM Korn said it is not a requirement now. This motion will formalize this into policy. CM Acquaviva said the Clerk is on phone with Attorney a lot. CM Vail said what he heard CM Acquaviva say was let staff draft the ordinance, forward and consult with Attorney and finish up per his guidance and then present to the next meeting.

CM Krieger would agree with the body but doesn't want an ordinance going on agenda by staff. CM Krieger said that only Council should direct an ordinance to be written. CM Vail said draft and proposed are two different things. Draft is in process. Proposed is for discussion. It is holding up the system to postpone; perhaps a heads up or in the FYI or reading the P&Z meeting minutes. Clerk Franklin said when applicant comes in for rezoning they plan out on the calendar when request has to post on property, when legal ads have to be run, when public hearings will be held at P&Z and Council. If P&Z Board recommends Council approval of rezoning then the ordinance is drafted for the Council meeting for 1st reading. If staff has to first take it to Council for discussion then the applicant is put off another 2 to 4 weeks.

Vote: 4 Aye; 1 Nay (Krieger)

(Attorney Excused at 9:02pm and short recess. Back in 9:10)

RESOLUTIONS:

6. Approval of Reso. 07-2015 – Appoint Mr. Patrick Voltaire as an Alternate to the Trails & Greenways Committee for a three (3) year term

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF PATRICK VOLTAIRE TO THE MALABAR TRAILS & GREENWAYS COMMITTEE AS AN ALTERNATE MEMBER FOR A THREE YEAR TERM; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 6

Recommendation: Request Approval of Reso 07-2015

Mayor Beatty read by title only.

Discussion: Mr. Patrick Voltaire introduced himself. Lives at 1680 Corey Road; is a 10-year resident and enjoys biking. He has attended some of the T&G meetings and knows the members and would like to work with them. Clerk Franklin stated that the members of the Trails and Greenways also support this appointment.

MOTION: CM Acquaviva / CM Krieger to approve Reso 07-2015 appointing Mr. Voltaire as Alternate Member to T&G Committee for a term of three years.

ROLL CALL: 1)CM Ball, Aye; CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Acquaviva, Aye. MOTION carried 5 to 0.

7. Budget Adjustment – Reso. 08-2015

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. 7

Recommendation: Request Approval of Reso 08-2015

Mayor Beatty read by title only.

Discussion:

MOTION: CM Vail / CM Acquaviva to approve Reso 08-2015 for budget adjustment as presented.

ROLL CALL:CM Ball, Aye; 1)CM Vail, Aye; CM Krieger, Aye; CM Korn, Aye; CM Acquaviva, Aye. MOTION carried 5 to 0.

K. PROCLAMATIONS: 0

L. STAFF REPORTS:

ADMINISTRATOR –

She thanked them for accepting her resignation. She has not bad feelings. She then reported that they at the SMC meeting they voted to keep the money for the educational center.

Dip in Corey Road that Krieger asked about; there are no leaks at the joints but the asphalt has subsided. She then explained the edges on Corey are crumbling where the houses don't have paved aprons at DW. Ball talked about all the road work needed on Marie. Mayor said all of the roadsides need to be filled to the edge of the roadway. Korn, south of Hall Road on east side of road; there is a deliberate cut out area for draining road. In front of Mr. Morris on Weber Road. TA said they are still working on SW project. It is the only spot that is still holding water. Acquaviva told about pothole on Corey southbound lane north of Malabar Road. It has gotten much worse since rain.

CLERK/TREASURER -

Re: last meeting when Special Election was discussed and price was mentioned at \$8,000.00. She contacted the Elections Office and they calculated the cost for both a special election with an open Precinct voting and a mail-in ballot. The most expensive it would be with more than 1,900 registered Malabar voters would cost no more than \$3,800.00.

Re: All Board meeting minutes are forwarded to Council by the Board secretary and all Council minutes are routed to Boards through their secretaries. Town of Malabar Board of Adjustment may have two variances coming up. Don't have details but will let Council know if and when it is definite.

M. DISCUSSION ITEMS:**N. REPORTS – MAYOR AND COUNCIL MEMBERS**

- 1) Acquaviva wishes BW well and thanked her. We worked through things and hopes she stays in touch. Glad she will be spending her last year with BW. She then told a WM story: yard waste filled the cul-d-sac and she called for a pick up and was surprised by how fast they picked it up. She asked Mayor about EOC resolution of support. Franklin said it was discussed at a recent SCLC meeting and they adopted a resolution and asked cities to do same. GV and Titusville both have adopted such resolutions.
- 2) Ball thanked Bonnie for the years she has served and he wished her well. He asked about the sign east of RR referencing road under water.
- 3) Korn said BW Is still welcome to go to lunch with Joann. On WM they are way more at responsive and do clean up. We need a special mtg to determine what we want. Need to form committee and determine what requirements. (Mayor said to put on next agenda.) What is difference between Manager and Administrator? How are we going to appoint committee members? We have 4 months to get our act together. CM Acquaviva also mentioned the recent fire and explosion in Century Oaks. Mayor said this is the 2nd time for this guy. Condemned the building, BCSO took the car he had paid 35K cash for a corvette. Mayor said he knew all about it. CM Acquaviva said a similar incident just happened in Cocoa and it was on TV news and in the paper. Why nothing on Malabar incident?
- 4) Krieger – intersection of Corey and Hall across from the baffle box has an area cut out. Also has a problem on his street, Lineberry Lane. The two properties at the south end of the street on either side put their trash on Atz Road instead of in front of their homes. The ditch on Atz is very deep. If WM doesn't realize it is theirs and they don't pick it up. Vail said at Smith and Atz they have the same problem. TA and Franklin both mentioned the house on the end that also has an RV in front yard with

- a fence and bar-b-q mounted to RV that is being used as living quarters. TA is pursuing the code violations and the Health Dept has been contacted re: septic.
- 5) Vail – Thanked BW for all her efforts and wished her the best. He agreed they need a Mission Statement and a Strategic Plan. TA said use a facilitator help with that. Road issues and pavement failing on the edge. Micro-surfacing they said they would fill up to 3". If we can find enough of these issues maybe we can bring them back in to do those with a trowel or float it in. Mayor then talked about cold paving. They should use hot tar. Process he is using is an off label. He is watching Marie St and the ripples are coming back. Mayor said he is going to insist that they fix the low spots and ripples before any further micro-surfacing is done. They used a chemical reaction to bond the cold patch. What they did was, what happens is, he can tell you what houses got the dirt. Vail wants to explore all avenues. The more small areas they can get together, the lower the price. Vail said it is FISCAL not PHYSICAL.
- 6) Mayor said his computer finally quit. 136 viruses and mouse was also sick. He will elaborate better on future agenda items.

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
One (1) vacancy on the Trails & Greenways Committee
One (1) vacancy on the Planning & Zoning Board

Q. ADJOURNMENT:

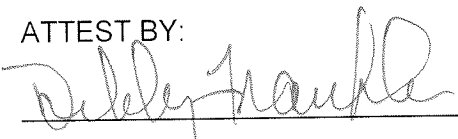
There being no further business to discuss, Chair asked for a motion.

MOTION: CM Acquaviva / CM vail to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:15 PM.

BY: 
Mayor Carl Beatty, Council Chair

(seal)

ATTEST BY:



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

Date Approved: 5/18/15
as clarified