

## MALABAR TOWN COUNCIL WORKSHOP MEETING

May 24, 2010

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 Chair Thomas Eschenberg. The prayer and pledge were led by Chair.

### B. ROLL CALL:

MAYOR/CHAIR

VICE-CHAIR:

COUNCIL MEMBERS:

TOM ESCHENBERG

JEFF MCKNIGHT

NANCY BORTON

BRIAN VAIL

STEVE RIVET, excused

MARISA ACQUAVIVA

BONILYN WILBANKS

DEBBY FRANKLIN

TOWN ADMINISTRATOR:

TOWN CLERK/TREASURER:

### C. PERSONNEL ISSUES:

Chair announced that Borton had told him she must leave at 8:30PM. He believed the intent of the workshop was to review the employee manual and grievance policy and turned it over to CM Acquaviva, who asked for the workshop. Acquaviva said the objectives of the workshop are to get familiar with the employee manual and grievance policy. The recent problems and working environment at town hall required this overview. Need a common sense approach to working with employees. We have not have been evaluating the town administrator or the town clerk. Felt we need to get ideas from everyone, talk in the sunshine and get input from our employees here tonight. She has some suggestions to recommend. The TA and Clerk need input from Council. We have a role in this process and we have not followed through. Thought this would be a good forum to do this. She went through the handouts. Possibility of having some more review of the steps in the chain of command could be reviewed. Evaluate the process. Borton said we don't need to re-write the SOPs we need to follow the chain of command. If we have problem with TA they should be able to go to Clerk. Council has not followed through on this. If we follow the chain of command, it is pretty standard. Borton said over the years she and others who were on Council adopted much of these policies. As far as having the employees evaluating the TA and Clerk, she is totally against this. If she has to leave wants Council to know she is against this. Acquaviva said things are supposed to be informal here but if you listen to an anonymous complaint from an employee, you don't know if that employee has been reprimanded. Council needs to take this action, and look at the file. When employees want to make issue with a supervisor, you can pull the file, and see if the employee has been written up and what are the complaints and are they documented and that then could be the complaint that the employee has against the supervisor. For that reason, she is against anonymous. Borton said she needs more clarification. Council gets complaint about Debby from employee, you can pull the employee file and review. If the employee has a problem with TA they can go to Clerk. Council should encourage that and following the procedure instead of the tattling method. Borton said Council has not followed the process already in place.

Acquaviva said one of her recommendations is that she wants the communication to get restarted from TA and Clerk. She referred to the FYI that the TA would put out on a weekly basis. Franklin would send memos to Council. She then has a painted a picture of what went on during the week. We can do that on a personnel issue as well. McKnight said he has no problem with the employee manual.

TA said she has put together the amendment to grievance process and she sent that out to Council and did not hear from anyone. She also gave it to dept heads and asked if they would have any issue and received none. It just added the language to provide an alternative if the

complaint was against TA. If approved she would do the training so each employee will know the process for a grievance. They sign for it (employee manual) but there should be training on how to do the process. She did a similar process with the evaluation process with the employee and the supervisor as well as the FMLA.

Borton and Acquaviva both don't have a problem with the proposed changes. McKnight agreed but said if there is a problem with the town supervisors he would prefer that the information is shared with Council right away not after a long period.

Borton said even if she just called them up and got a verbal report on what happened; she suggested this instead of in writing, which may be a problem down the road with an employee.

McKnight said if there is a little spat amongst supervisors, let the Council know. It does not have to be brought to a public meeting. Vail said when something gets to the levels of the recent incidents, than it requires this attention.

Acquaviva said the burden is on the Council to do the exchange both ways so when you do evaluate her you will know. Vail said they will hear the complaints and rumors before and there will be no surprises.

You may hear about ....that type of thing. Getting back to doing the FYI will give them a heads up. Borton wants to know when there is a fire and incident, she wants to be called. TA will text her. Borton wants to know so she is not uninformed when the residents call. Vail said the information must be shared or they can't function.

If employees call Council, they need to be told to follow the procedure and talk to the supervisor. Vail encourages them to read and follow all protocol. TA said if he let her know she would reach out to that employee. Vail said there is a line in the employee manual. Vail read retaliation sentences from manual. Town will not retaliate against an employee making complaint against something. Borton said if someone is doing a good job, you don't want to loose them.

Vail said the challenge is to not micromanage, to trust managers to do the right thing. Acquaviva said that investigation is good and we are called to document a little better. We are looking at the status at town hall. Vail said about employees coming to us and having a meeting with the supervisor. Borton said she meets with TA and employee, if that is the issue. The request for a third party at the meetings has been stretched at the Fire Dept. TA gave an example of now anything that comes up in FD, the person now requests an outside observer to be present. This has gone far beyond what was intended in policy. A supervisor has a right to have a meeting with the employee. The FD does this all the time now. She is concerned that in life and safety issues the chief will not know if he can rely on having his orders followed.

Regarding grievance procedure, after they follow the procedures, after five days you can have an informal meeting with the supervisor. Vail does support the manual. Vail has not been forthcoming with TA about this. We need to communicate. It may not be what we want to hear. Acquaviva said her evaluation is behind. She has been coming down to Town Hall. Morale seems to be better now; perhaps because all of this has come out. We need to keep an eye on this. She did not feel comfortable with the way we left it at the last meetings without resolving anything. Borton said it is not necessary to rewrite the policy; we just need to follow it. McKnight said he does not know how to evaluate some of these things. Vail said that we need good morale. Borton said that morale is not all of the issues. If we make changes and she has done everything that that we have asked her to do. TA asked McKnight if he had questions please call her. She will explain and ask if there is something else. McKnight said the FD is handled differently; we need to deal with the volunteers. He has been working with the policy and

procedures and they are very dynamic and can be retro-active. We need to address them. McKnight said that Franklin stated that previous Attorney Torpy had said the FD was a sovereign entity. Attorney Karl Bohne stated that without the Town of Malabar the fire dept could not exist. Borton said she is in full support of changing the policies and procedures for the Fire Dept. She has asked for it and they said that there was a policy being rewritten. Make them mirror Town's. We put it in and the policy she is referring to is available now.

Vail said to back up to TA – is it appropriate that TA managing of employees pertaining to a situation. Not a general grievance, but a specific against the TA. Wilbanks said that any employee knows they can talk to a Council person or the media. If you shoot from the hip, and let emotion get in the way, then they have to own it. She has said that from the beginning. She hopes that Council hears the positive as well as negative, but usually that is not the case. Vail said you are not going to hear the positive because it is human nature. Borton asked if Vail would be more comfortable asking Clerk about TA and vice versa; perhaps.

Acquaviva has seen TA and Clerk interact and work and has seen them challenge each other. She sat through an EELs meeting and watched them handle themselves in a meeting. She felt very fine in that meeting. She acknowledges that there was a problem. She said it behooves us to not just say ok it is over. She wants to follow up. Borton wants to suggest some things to benefit both of them. Acquaviva said then you have something to measure – a litmus test and see if there had been progress. Borton said in all fairness, all of the problems that had come up had come up and she had talked to other people. She had got an envelop full of all kinds of stuff and news clippings. She reacted because Wilbanks was doing what we asked her to. Acquaviva said that every Council needs to do the evaluation on the TA and Clerk and look at everything and make sure we are doing everything.

Don't want to change the oaths. Do change the section 8 and 9 as TA has proposed.

Mayor said that an ordinance prevails over a resolution and asked about language in Section 1. Appointing authority refers to the Clerk not the Administrator. Franklin said when referendum failed to add Administrator to charter; Council adopted an ordinance establishing the Administrator. The areas in the employee manual needed to be changed from Clerk to Administrator and that was missed. The TA suggests going through each section then bring to Council. Subject to appointment of department heads subject to approval by Council. It has been flagged by TA and she will work on language.

2<sup>nd</sup> sentence says that the Council appoints and fires. Agree that that line should go away. McKnight said that no employee shall be fired without being approved by Council. Change to notification. Change the wording. Ordinance trumps resolution. The employee manual needs to be updated. Borton suggested Mayor go through manual. On page 4, that needs to be changed to say travel.

Grievance Procedure; Section 8. It described the grievance procedure and the grievance committee. He is not real fond of the make up of the committee. Unless there is a real good reason, there should be no employees – should be a group of objective residents. The whole thing is weighted in favor of the Administrator. Those two pick the third one. If they can't agree, the Administrator picks the third. If the issue continues at any level; the makeup is weighted. McKnight asked how to get unbiased citizens. Mayor said hopefully you would get a group of people who would be fair. McKnight suggested that the names of the board members be put in a hat and pick three names. Acquaviva said they have never given the policy a chance to let it work. TA said it has been around since 2003. Mayor said that is why we are here. Acquaviva said that it is not the reason she asked for this workshop. Acquaviva said the Mayor is not correct.

Borton excused at 8:30. Acquaviva asked if this had been done with earlier Administrators; no. Mayor said 9 times out of 10 an employee sucked it up so they could keep their job. Vail asked if this is standard procedure for public policy. McKnight said it is probably something taken from Palm Bay.

Mayor would not ask employees in public. Tom Miliore, PW Manager wanted to speak. Acquaviva said the employees sign that they read the employee manual including the grievance committee. Tom Miliore said the grievance committee is made up by selection of members by grievant, the department supervisor picks the second member from the department employees and the 3<sup>rd</sup> is selected by the other 2. If the grievance was against TA, it would place that role on the Clerk. McKnight said there is a possibility that the 3<sup>rd</sup> person could be chosen by one or the other.

Acquaviva said she would like to speak to Karl Bohne about the grievance committee make-up. Mayor asked her to talk to Attorney at a Council meeting when we pay him anyway. If she calls him directly, he starts charging the town. Vail said Bohne will say he has to research it. Vail said they should send information to him and let him report at the Council meeting.

Acquaviva said we are here because the policy and procedures have not been followed. Mayor said the whole thing and the reason we are here tonight is because of the Carl Beatty issue. Vail said there are some inconsistencies. Acquaviva said that the purpose of the meeting was to get Council to familiarize themselves with the policies and procedures. Vail said if there are inconsistencies they need to be corrected, he is willing to have one or two more workshops. He says we meet again. McKnight asked if anyone else had any comments besides the Mayor. Bud Ryan from audience said that the plan that uses the people from the department on the committee, there might be problems. Jacob Sewell said he would prefer to have the people that work side by side with them daily and he would rather have them on the committee. They know what the job consists of. As an example they discuss if someone has problem with Tom. Form a committee, complainant gets to pick one person and department head picks the other person and then those two pick the third. Jacob said he had no problem with that. Bud said that juries don't have to be made up by lawyers. The same should apply here. Acquaviva said pulling people off the street and not listening to the employees and the TA would seem like she doesn't have the abilities to do her job. Why pull people off street instead of using the process that is in place. Tom said if it is against the administrator, then the third person should be picked by another. Identify the points. TA will formalize and send to the attorney for review. If it is against anyone else, let the system work. Following the analogy, she would have gone with the Chief. But she did not; she reviewed and found that the Chief did not follow the procedures. Mayor said she will not be here in 2030 the person may not be here either. TA said that this document is a living document. So when Mayor reads it, he is not thinking of a person. McKnight said this is no attack on her. TA will look at it. She will send the notes to them as well. She knows Council's concerns. Board members and residents do not know the work situation. He would prefer to draw three names from all 15.

Vail said the third person is drawn from the pool of 15 board members. Bud said jury of peers is social standing; commoners. It doesn't mean co-workers and people intimately familiar with the job.

Mayor said we will go through the rest of it and send comments.

Evaluation process: Mayor wants to speak his piece first. In the section with his two forms, the first one is for town Council to use first. We don't know what goes on day to day. He thinks he needs to put in one more plug for his forms. He kept to things that Council is likely to know about. You should be able to grade every one of these factors. You have enough to handle it.

It is simple, easy quick. The plug for the other one is more controversial. It is tailored to those things that employees are likely to know about. It won't have any budget prep information.

McKnight said his two cents is on the second one, should be more yes or no. A subordinate, should only have yes or no answers.

Acquaviva said what is the problem with the first form? McKnight said that the first one is 4 pages long. Go to tab #5, current evaluation is too much. McKnight said it is too much. He wants to look at the current one and the Mayors; does not want all the others from other areas. The other one was given to you to read by the employees.

Marisa said the biggest thing is using it. Acquaviva said the reason no one has used it because it is too long. What about her personal relations, courtesy and training others. When did she do training? The burden is on him to oversee her and know that she does this training. Actually talk to her and find out what she is doing. Vail gets the interaction because of the vehicle repairs. McKnight said he gets negative calls and she is to blame. He understands some. Develop equitable personnel policy; how can he do that if he isn't familiar. How would you know if she is an effective listener? It is not how she listens to residents; it's how she listens to each Council. McKnight said Acquaviva has high expectations. She said he is going to have a problem with any of these evaluation forms. Mayor asked how we know if Bonnie is an effective listener. One way is at the meetings, this is one way to evaluate; the second way is when you call her, that is the second way you evaluate; the third way is to the few times you may happen to be in here or ask some of the other employees, this would be another way to evaluate her listening skills. Acquaviva stated it is Debby as well. This form is for the TA; he would make up one for the Clerk. This form is not the one he remembers. Franklin said Council adopted it, manual and form in 2007. Acquaviva said they have an obligation to the residents to do this. She works and has three businesses and three kids and then has time to be involved enough to do this as well. TA said she communicates via the FYIs. They would not want to be blindsided by events in town. You can't say you don't know how the communication is. How would her training of employees be reviewed? Mayor doesn't have training on his form. Mayor doesn't see how any one can use these on TA and Clerk.

McKnight was inundated with stuff from other towns. Vail would like to spend some more time on these. Bonnie asked Jeff to provide questions that he feels are appropriate. She will make out own forms. She will put it on for discussion. She will put this together. Have it as discussion item. They will build on it. Obviously it needs work. There are deadlines. They are for budgeting. She would give ranges of scores, possible raises. We can add the number later in the budget for this year. Don't get stuck on the deadlines.

Mayor said that in the past, the raise was given on available revenues, not merit. TA said that she was told they were tired of non productivity. You are going to give a raise for merit. Mayor said that some got big raises 10 to 23%. If you want to base it on merit use a raise budget. Don't do that; McKnight and Mayor discussed the process.

Council had directed that they don't do a merit. Do acceptable standards. If they don't get a 3 they would not get an increase. When they get to 3 then they could get some. In bad years, no one got any. The incentive is for good performers to get something and the bad performers not get anything. Mayor still wants his raise budget. His reason in the memo is that if we have a new Council member they would not be able to review the Clerk or TA. If you are not basing it on merit, have never based increases on merit in the past 15 years. The system approved in 2007 did not attach the money to the scores. The years you don't have money you still want to reward with a high score. If there was money then the money would be based on the available revenues. Mayor said it boils down to how much money you will have; you can't determine. Then if there is enough; put in across the board the 3%. Vail said if you had a raise budget, you

would have to put it into each budget. She gives the numbers to them, when you vote, the one percent goes in and it cost 45K. Council has to come up with the lump sum based on revenues. Vail said in the review process, it coincides with the writing of the budget. Whether there is money there or not. Acquaviva is constantly changing; November she just has to do Bonnie and Debby and she can do that with the right form. We need to do it. The new person should be able to do it, they haven't done it. She could do it, Mayor can't do it; no one should not be able to do it. McKnight said it is not working and we need to work on it. TA said to leave it in May. Let's say we get new people and they do it; if they don't do a favorable one they could get to move the Mayor said at the next meeting, if they approve his form, they can take a recess and they do the form

Mayor said they do not get paid for this work but they are just a volunteer. She has never worked for a paid Council. Vail wants review of TA and Clerk to be in Oct so they have a full year to review.

9:30 put on the next tape.

Vail said some people come up to speed. Sitting in November would you be ready in May. Acquaviva said that he has been here 3 years. Mayor said until you have gone through the budget process; by October, you would know. Vail said he is not putting personalities in the equation. This is a system, a tool. Acquaviva said some of these things have not been implemented. That is where she is coming from. We are not implementing as we should. Vail is guilty. There has to be something implemented. Mayor said it is not in the ordinance to require the review. Don't do it because you are obligated, do it because you want to. Mayor is going to use his form and do it and make another form for the Clerk and do a review on her. He will send those out. McKnight will identify 5 or 6 categories and send them to Bonnie. Acquaviva will also look at any of them. There should be markers for her to know where to work. It is a common sense thing that you should be able to evaluate so you are not in some kind of blind side. Vail asked this information to be forwarded to Nancy and Steve. It was not well spent. We need to get our house in order.

#### D. ADJOURNMENT

There being no further business to discuss, **MOTION:** McKnight / Vail to adjourn this meeting.  
**VOTE: All Ayes.** The meeting adjourned at 9:45 PM.

BY: Thomas M. Eschenberg  
Mayor Thomas M. Eschenberg, Chair

ATTEST BY:

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

Date Approved: 6/7/2010