

**TOWN OF MALABAR
TOWN COUNCIL MEETING
MONDAY APRIL 20, 2015
7:30PM
2725 MALABAR ROAD
MALABAR, FLORIDA**

AGENDA

- A. CALL TO ORDER, PRAYER AND PLEDGE
B. ROLL CALL
C. ADDITIONS/DELETIONS/CHANGES
- D. **CONSENT AGENDA: none**
1. **Approval of Minutes** Regular Town Council Mtg – 3/2/15
Regular Town Council Mtg – 4/6/15
Exhibit: Agenda Report No. 1
Recommendation: Request Approval of Minutes
- E. **PUBLIC COMMENTS:** Comments at this point may address items NOT on the Agenda. Comments related to subsequent Agenda Items may be made as those items come up. Public comments do not require a Council response. (Speaker Card is Required) **Five (5) Minute Limit per Speaker.**
- F. **ATTORNEY REPORT:**
G. **BREVARD COUNTY SHERIFF'S OFFICE REPORT: 0**
H. **PUBLIC HEARINGS: 0**
- I. **PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING: 0**
- J. **PRESENTATIONS: 0**
- ACTION ITEMS:**
MISCELLANEOUS: 4
2. **Annual Performance Review of Administrator**
Exhibit: Agenda Report No. 2
Recommendation: Request Discussion / Action
3. **Town Council Accept Administrator's Memo dated 4/2/15 (Korn)**
Exhibit: Agenda Report No. 3
Recommendation: Request Discussion / Action
4. **Approve 1st Mtg of month with Attorney; 2nd Mtg without (Mayor)**
Exhibit: Agenda Report No. 4
Recommendation: Request Discussion / Action
5. **Approve that only the Attorney will Draft Ordinances & Resolutions(Mayor)**
Exhibit: Agenda Report No. 5
Recommendation: Request Discussion / Action

(No Recess – Attorney Excused)

RESOLUTIONS: 2

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

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

K. PROCLAMATIONS: 0

**L. STAFF REPORTS: ADMINISTRATOR
CLERK**

M. DISCUSSION ITEMS: 0

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

Two (2) vacancies on the Planning & Zoning Board

Q. ADJOURNMENT:

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service. In compliance with F.S. 86.26 and the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 1
Meeting Date: April 20, 2015

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

Attached are the summary minutes for the following meetings:

- Regular Town Council Meeting – 3/2/2015 w/ clarification
- Regular Town Council Meeting – 4/06/15

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Draft Minutes of the following meeting:

- Regular Town Council Meeting – 3/2/2015
- Regular Town Council Meeting – 4/6/15

ACTION OPTIONS:

The Town Clerk requests approval of the minutes.

“The following draft minutes are subject to changes and/or revisions by the Town Council and shall not be considered the official minutes until approved by the Town Council.”

MALABAR TOWN COUNCIL REGULAR MEETING
March 2, 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 Vail led the prayer and pledge.

B. ROLL CALL:

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

For the Record, the Fire Chief Christopher Robinson and PW Dir Tom Miliore are also present.

C. ADDITIONS/DELETIONS/CHANGES: TA said to pull #7 and she will try to have it ready for next agenda if she gets information back from other towns our size. CM Acquaviva asked to pull #6. She doesn't know why they are getting additional information at the start of the meeting from the Mayor regarding a quote from Everglades. She asked Mayor if Council directed the Mayor. This is a strong Council form of government. They passed a resolution recently that she asked Clerk to distribute showing the duties of the Mayor as spelled out in the Charter. She wanted to know why the Mayor took this action to get a quote. Motion; CM Korn to move it to discussion; Council consensus to do so.

Chair, Mayor Beatty wants to allow BCSO Report to go next.

G. BREVARD COUNTY SHERIFF'S OFFICE REPORT: Feb had 2 burglaries and 1 vehicle break-in in Jan. Fraud in Jan. Stolen property in Jan and 0 in Feb. CM Vail asked about break-ins in GV. Yes house on US1 and Habitat Golf Course and they caught both culprits. Said there have been a significant increase in roadway accidents in Malabar in Jan.

D. CONSENT AGENDAS: none

- | | |
|--------------------------------------|---|
| 1. <u>Approval of Minutes</u> | Regular Town Council Mtg – 1/5/15
Special Town Council Mtg – 2/17/15 |
| Exhibit: | Agenda Report No. 1. |
| Recommendation: | Request Approval of Minutes |

MOTION: CM Vail / CM Acquaviva to approve the Minutes as corrected.

Discussion: CM Acquaviva corrections: 1/5/15 pg 4, 2nd line clarifies to state CM Acquaviva was specifically asking about “fire” inspections. On the 2/17/15 minutes, pg 3, 6th line, sb “those” minutes not “the” minutes.

VOTE: All Ayes.

E. PUBLIC COMMENTS: Comments may not address subsequent Agenda Items. **Comments do not require Council response.** (Speaker Card Required) **Five (5) Minute Limit per Speaker.** Speaker's Card: None

F. ATTORNEY REPORT: nothing

G. BREVARD COUNTY SHERIFF'S OFFICE REPORT: (DONE AFTER "C" above)

H. PARK & RECREATION ADVISORY BOARD CHAIR REPORT: Chair not present

I. PLANNING & ZONING ADVISORY BOARD CHAIR REPORT: Pat Reilly, Chair said he didn't know he was to present.

J. PUBLIC HEARINGS: 0

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

2. Resident Ms. Laura Mahoney re: Burning of Yard Waste

Exhibit: Agenda Report No. 2

Recommendation: Request is Open

Laura Mahoney, 2475 Malabar Road, came forward and addressed Council. (Presentation attached and made part of the minutes) She handed out copies of the Preamble. She referred to Ord 2014-03 not allowing any burning at all in Malabar. So for the Rural Residential type of life desiring having a campfire on their own property, it causes a hardship and essentially is the taking of property rights. The open fire restrictions are the only specifically prohibited. DOF doesn't deal with small camp fires; with 200 parks in Brevard alone, requiring permits would require more staff. She explained how her husband prepares and handles their fires. Ms. Mahoney said another point to correct in code is that land clearing can only be done for "future construction". She referenced Daniel Welton's email. She has property in Viera; only 1/6 acre and it produces about as much as their property on Malabar Road. They have burned yard waste on their property on Malabar Road since 2004, when her kids were small.

MOTION: CM Korn / CM Ball to amend Ord 2014-03 in Sec 8-73(b) to remove language "land clearing for future construction" and allow permits on a case by case basis and delete the word "prohibited" in Sec 8-83(d) and move sub para Sec 8-83(e) under 8-78. (Motion amended after the following discussion:

Discussion: CM Krieger asked how this ordinance relates to the agreement with DOF. He doesn't think people who have been here for years should have to pull a permit every time they want to burn in their pit. Atty said he can't tell what the relation was to the agreement and ordinance. Franklin said the ordinance was primarily adopted to update the State agency references (FFS instead of DOF and FDACS instead of State). Atty said the ordinance from 1992 prohibited yard waste burning. CM Ball understands what Don is saying. If he has a chiminea and its cool out and occasionally they may want to have an outdoor burn after hours? What about asking to live a rural lifestyle? Atty said it is not the chiminea or other contained pits. This was much discussed during the adoption of Ord 2014-03 and the language was already in the code prohibiting yard waste burning. This prohibition was only for the uncontained open fires. Chief came to podium and said they have residents on file that have called ahead of time and let them know they were going to burn and have safeguards in place; they are responsible.

CM Korn asked about the 55 gal barrel with mesh screen top in his backyard. Chief said it is technically a contained fire. So is a ringed fire pit. CM Vail said he has a small fire ring and if he wants to have a burn he calls the FD. Laura Mahoney said the DOF doesn't issue permits

for open fires less than eight feet in diameter and less than ten feet in height. For larger fires you have minimum setbacks as referenced in handout. CM Acquaviva said they have lots of yard waste that is generated and WM is very good about picking it up. Ms. Mahoney said they are right on Malabar Road and if they piled it up on the roadside it could be dangerous for drivers both for vision and safety since palm fronds get blown around easily.

CM Krieger said he wanted language to make it apparent about what is a contained fire – and what is the distance – he heard 75’.

Chief said they have good checks and balances in place now; there is no cost for the permit; they don’t want people to burn negligently.

CM Korn, asked about the fires on resident’s property in the last year and a half that was done without a permit or calling the FD requiring the FD to respond. CM Acquaviva said she didn’t know she could just call Fire Dept to ask for a Special Permit. Chair called FD Chief to podium. He said the only problem is the person who doesn’t call. The instance Korn referenced, that particular day was a “no burn” day per DOF. TA explained why we adopted the ordinance so that we could issue permits for burning.

Atty said change Sec 8.73 (b) to allow for a case by case and in Sec 8-83 remove the word “prohibited” from sub para (d). CM Vail asked about reverse 911? No it cost 5K each year. Chief said we have great

Korn said Krieger will have the minutes from this meeting. Krieger thinks it should go to Park Board and P&Z Boards for their review of this before it comes back to Council. Atty said it does not require that but Council can do what they want. CM Acquaviva said she is satisfied with the Council making this decision. Board Members are welcome to attend and participate.

VOTE: All Ayes.

3. Recommendation from Planning & Zoning Board – Maximum Bldg Coverage
Exhibit: Agenda Report No. 3
Recommendation: Request Direction

Presentation from PZ Bd Chair.

Discussion: CM Acquaviva asked if it meant larger buildings. PZ Chair Pat Reilly said that R/LC would allow larger foot prints but over 4,000sf would be a conditional use. He explained the P&Z Board is considering recommendations to change zoning along arterials (Babcock, Malabar and Highway 1) to RLC. Mayor said other commercial districts use a percentage. CM Krieger said 20% is great. It seems to be what commercial should adhere to.

Juliana Hirsch from audience, 1035 Malabar Road. 4000 sf is not very big. Some houses are that big.

MOTION: CM Korn / CM Ball to recommend option 1 for P&Z Board to explore.

Atty Bohne stated that P&Z Board should also look at changing the Comp Plan. Any code change would be irrelevant if the 4,000sf limit remains in the Comp Plan.

VOTE: Ayes 4; Nay, 1 (Acquaviva).

L. ACTION ITEMS:
ORDINANCES FOR 1ST READING – 0

RESOLUTIONS - 2

4. Authorize Joint Agreement with FDOT (Reso 03-2015)

Exhibit: Agenda Report No. 4

Recommendation: Request Action

Mayor Beatty read Reso by title only.

MOTION: CM Vail / CM Korn to approve Reso 03-2015.

Discussion:

Franklin explained Reso and Atty explained why we are the agent. CM Ball asked Attorney if we are buying in to this and approving it; are we endorsing any other project by approving this. Atty said we are endorsing the lighting project as described in the scope of services only.

CM Krieger said he it looks like it is benefitting a private business. Krieger asked if these are replacement poles or new poles. Franklin said it is four (4) poles in Malabar and five (5) in Palm Bay to light up the curve. This resolution only authorizes the TA to sign a JPA with FDOT for improved street lighting on Hwy 1 at the curve between north Malabar and south Palm Bay boundaries.

CM Ball thought it appeared that this was being pushed through without all the information. Franklin said we have kept Council apprised of this project since November, 2014. She will send out more information.

ROLL CALL VOTE: CM Ball, Nay; CM Vail, Aye; CM Krieger, Nay; CM Korn, Aye; CM Acquaviva, Aye. Motion approved 3 to 2.

5. Adopt Reso 02-2015 opposing Seismic air-gun testing off the Atlantic Coast in the Search for Oil and Gas

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Mayor Beatty read Reso by title only.

Discussion: The Mayor said SCLC and many municipalities have already passed similar resolutions. Mayor said the explosion equates to 250 decibels and he has seen a bunch dolphins that floated to surface.

MOTION: CM Acquaviva / CM Vail to approve Reso 02-2015.

Discussion: CM Ball said this sounds very political. He said we are non-partisan and should not endorse one way or the other. CM Korn said the art of politics is about influence. Our input may help influence. Mayor said the State of Georgia has already gone forward with allowing this testing despite what the people wanted.

CM Krieger put out feelers at a couple of Departments at F.I.T. and he has not gotten anything back yet; he only asked yesterday. CM Krieger said this smacks of politics and they shouldn't be involved; or we could table until he hears back from FIT and he (Mayor) gets the additional information to share with Council.

CM Acquaviva asked Mayor why he supports it. He said because the SCLC has adopted it and many municipalities have adopted similar resolutions. He can't name them but he will submit the information he has on this subject so it can be in the next packet. Mayor said he witnessed this test on Duda Ranch. He is thinking about whales and other fish and mammals that could be adversely affected. TA asked if she should write a letter to Senator Nelson. Consensus of Council was to not send a letter. Review material when it is available.

MOTION: Ball / Korn to table until more information is provided. **VOTE:** All Ayes.

MISCELLANEOUS:

The Following Item was moved to Discussion:

DISCUSSION ITEMS:

- 6. Slope Mower Repair Quotes (Council Directive)**
Exhibit: Agenda Report No.6
Recommendation: Request Action Moved to Discussion

The next item was pulled until TA completes the information gathering.

- ~~**7. Disposal Process for Declared Surplus (Council Directive)**~~

(No Recess – Attorney Excused)

M. PRESENTATIONS: Thank You Letter to Building Official

Mayor read letter into the record; it is a letter thanking the Roger Cloutier, Building Official, for his time and efforts in making a cover for the portable sound system.

N. PROCLAMATIONS: None

O. STAFF REPORTS:

ADMINISTRATOR: None

TOWN CLERK's Report:

Clerk explained why she had sent out minutes by subject matter to Council last Saturday. The implication from the 2/17/15 meeting that adequate discussion had not occurred at the time initiated these. This was for the benefit of the new members and a refresher for the other members that the topics discussed at the Special Mtg on Feb 17 had been discussed thoroughly at several meetings starting before the Budget workshops. They covered SW projects, CIP update, Roads and PW and FD vehicle inventory and department status.

SCLC Dinner Meeting is next Monday. We are co-hosts with G-V. Appear to have a good representation from Malabar; Cindi and I will be checking people in as we are the co-hosts.

Audit Report should be delivered to each CM directly from the Auditor later this week. This will be on the 3/16 agenda for acceptance. We do this with a resolution. In the past we have allowed the Audit firm to present at the beginning of the meeting as they have to drive back to Orlando afterwards.

Our Accounting Clerk Jackie Garner is a tremendous asset to our department and has been doing all the Accounts Receivable and Payroll since Jan 1. The separation of duties with me reviewing it all and Cindi doing accounts payable and Jackie doing accounts receivable truly provides clear checks and balances. The Auditor is very pleased with the reports we are able to produce.

Last item is to advise Council that a PRR (public records request) was made of a Board Member for all his emails that related to Town business and copies of his phone bills that included town officials calls. After 13 days he acknowledged my request and stated he had no material that pertained to official business. I am telling you this because it may escalate into a civil matter. It will not involve the Town as I have done as I was supposed to do per F.S. From this point on it will be a civil matter between these two parties. That's all.

TA said Clerk was following direction of the Town Attorney regarding this matter.

TA also said that the Auditor would be happy to come early on the 16th to meet with any Councilmember before the meeting; he would have to meet with you individually. Franklin then added that after they review the audit report if they have questions or want clarification they are welcome to ask either the TA or her.

P. DISCUSSION ITEMS: Agenda Item # 6 (moved from action above)

6. Slope Mower Repair Quotes (Council Directive)

Exhibit: Agenda Report No.6

Recommendation: Request Action Moved to Discussion

Discussion: Per Council direction on 3/16/15:

Verbatim Minutes from RTCM 03/2/15 Regarding Slope Mower Repair Quotes:

Mayor: Well what happens; I'll just start. We have a quote from Robinson Equipment for \$38,335.83 and one from Everglades is \$49,451.32. **Vail:** there's a second Everglades in there for \$38,500 **Acquaviva:** yeah **Mayor:** correct; I guess you want to know where that came from. **Acquaviva:** this one here? I'm real interested.

Mayor: What happen was I called because we cancelled the meeting and wanted time to look at it. So I went back and called because I was looking at Everglades and it appeared to me that it was parts list with prices on it. So I called and she said yes, that's what she requested to replace all the parts. In the conversation, for different things, she also offered me. She says, I'll tell you what I'll do; I will send a technician up, free of charge to evaluate the machine for you because they had not seen it. **Vail:** that being discussed?

Mayor: right; so the technician came up, I asked her can I be present for the inspection because it's her business, not mine. She said sure. Can I invite some guests? So I asked Bud Ryan and Captain Bob Seigmann, he wanted to see because we didn't see the machine, we had pictures. Some of those pictures were upside down; if you didn't realize it you didn't know where you were. So he came up and I talked to Bonnie about making the machine available to them; she said no problem. So he pulled it out in the yard out here and he had the operator do different things; he looked around stuff and...actually at the time, by word, we talked about a couple of things that had been done to the machines to make them a little better. Of course, this is an obsolete design and they don't make them like that anymore. So I guess you have the old ones and new ones still available. So he left and so when they came up with a price, I wanted to see it because I was there. I wanted to be able to explain things if someone says you were looking at it; what does this mean; how come this, this, this. So I got the first page; see there's two pages. The long list is the original thing with the minimal repair it to take all the play out of it. After I saw how cheap it was, I called and said how about including two items which is packing the cylinder; I couldn't see it leaking but it was wet. So how much would that cost. Also the tie rod ends because the guy from Titusville had explained that the tie rods are bad, so therefore, from that point on, we would have to determine they were fine or we would have to fix them. So there is nothing on these two extra bids that are any obligation whatsoever. This is a bid based on observation; we were here with the technician and we hadn't been before. So what happens, when I got the first bid and saw how low it was, I said wait a minute so I asked about the other two points which are on the second one? One, I'll make up another but it's probably pretty close. I called down there because I hadn't gotten the second bid because I wanted to put the two together before I told Council and meanwhile I found out that the first one disappeared. She sent both, around \$130, it might even say on there, she emailed these to me and it was too late to distribute at that time so I brought them and came in here and put them out before the meeting.

Acquaviva: my only problem with this; the bidding process so that it is apples to apples and everybody's doing it; it is not your job to go and get a bid. Yeah, I think it's great that you're

looking at the machine and you're doing that. But to bring a bid in like right at 7:00, without it being; you know, we have to look at our bids all together in a way where; I don't think it's your job to be getting bids like that. I don't know.

Mayor: basically, Everglades submitted the bid based on eyes on; they did the inspection, a technician at no charge.

Acquaviva: yeah, but why wasn't Town Hall involved in any of that in the sense of so that all three or whatever, the Robinson and; it was presented to us in that way. I mean; I can't go out and go get quotes and bring them in here and just put them up here and not even telling anyone I'm out there doing that work for the Town but I wasn't told to do that by the Council to go get bids. That's what I have an issue with.

Mayor: yes

Wilbanks: the original numbers that you actually got for supplies are here; the original numbers. It was a quote for each company to do the same information to us; the re-hab of the entire arm. If you want to go with getting another from Robinson, I would take what they have come up with here, in fairness, although the numbers kind of are out there now, so it's not as fair and objective what we normally do. I could still get Brian from Robinson to tell us what just doing what is said here and then you would be able to at least compare the numbers.

Mayor: yeah, well this price with a hands on inspection is like one-tenth of just replacing everything.

Wilbanks: well I understand that, but what I'm saying to you Mayor is to get validity that we do due diligence and get two quotes, I could write up the scope from this one and ask Robinson to also quote on it. And it would be under \$10,000 so it could be a quote and not an RFP.

Vail: I do remember discussing getting a representative from Alamo, Everglades; that's the supplier or dealer that we purchased it from. To send a technician to review this machine and give us a quote; I remember discussing that at length at Council. I assuming

Acquaviva: did we give you the directive?

Vail: is this what Carl did through you; through Bonnie

Wilbanks: Carl actually called down there; I think you were talking to probably Rose?

Mayor: right

Wilbanks: okay; she's the head of the service department and she's the one who offered a technician come up free of charge. They didn't do that when we asked at the same time that Brian was coming up; they did not offer to do that. She offered to strictly, because she had the serial number off of the machine because that's where we got it from, they said that they could actually quote without having to physically see it. But we were asking for re-habbing the whole arm

Vail: that was back in December

Wilbanks: correct

Vail: but now in more recent discussions, it came up that we want the machine assessed and gone over by an authority on that machine by Alamo by Everglades; we get a price from them. This is what Carl has brought this evening is what I'm to assume?

Acquaviva: yeah, right when we sat down

Wilbanks: I mean, this was heard on the 13th

Mayor: I didn't get the numbers until 1:23

Acquaviva: listen, 100% I gotcha; listen, when anybody, when we're doing these kinds of bids and we're doing this slope mower and everybody's been so thoughtful about it, we all don't appreciate getting draft minutes late; to sit down and have a whole quote, a big quote, I don't feel like I could make an action item on this to say

Korn: it's not an action item; we changed it to discussion

Acquaviva: that's why I did that but I'm say is I don't think Council told you to go out and get a bid though. Look at it and whatever, that was fine I guess. **Vail:** Council **Korn:** why else would the guy come up here? **Vail:** Council was of the consensus that we wanted a service

representative to come and look at the machine **Acquaviva:** right **Vail:** and I'm to assume, not to defend anybody, but I'm to assume that's what was orchestrated through Bonnie with Carl and these others that showed interest **Acquaviva:** and truthfully, I feel like if an RFP; maybe I was not how we processed anything going over a certain amount; how we do our bidding processing. Hey listen, for any one of us out there doing special projects or whatever, that if you're bringing in a bid, and I didn't have a chance to talk to you or anybody about any of this so that's when I saw the bid come in, we don't normally do the bidding process like this. It is normally a thing where it is apples to apples. I'm just doing my due diligence here as far as **Vail:** I just have one thing to throw out here; I agree with Bonnie that we take this scope and forward it to the other vendor that has shown interest in it and no prices, just this is what we are considering doing **Wilbanks:** instead of on the full re-hab t go this route **Vail:** this is a consideration that we are making, would you give us a price on this level of service. I am in agreement with that **Korn:** we are in a semantics problem here and a definition of terms. I remember you said Brian from Robinson **Wilbanks:** Brian **Korn:** I remember he had a blue shirt on but I don't remember his name. I remember at the end of the meeting I said do you feel that you have looked at the equipment and have enough knowledge of it to offer us an estimate to make it serviceable. What I did not do in that request was define the term serviceable. For some people, that might be make it all brand new and others make sure it starts once in a while. **Wilbanks:** actually Council gave **Korn:** let me finish **Wilbanks:** what would it be to be runnable and how many years **Korn:** serviceable and safe is what I feel **Wilbanks:** and you all said three years **Korn:** but this is where we may have come up with two different ones. But we are looking at a whole big range of money that brings some real ethical questions into my mind that I haven't even begun to sort out; it was a long ride today; I was only 100 miles away this weekend but it was really wet down there. But my point is we need to get the same definition of what we're asking for, probably in this case because the individual from Everglades did come up here; word the same request to Alamo and whoever **Vail:** that's what we just discussed; that's exactly what we discussed **Korn:** but do not share with the other vendors the price the other ones gave so that one says one did it for \$2,000; we'll do it for \$9,000.
End of Verbatim.

Franklin explained how the quote was done. It did not involve the TA; there are no records of what was asked from Everglades; TA was instructed by Mayor to have the slopemower at town hall at 8am on 2/13/15 because he and the others were going to inspect it. Franklin then explained that we have to get quotes for the port-a-lets for Springfest and the Clown and the Ponies and all of it is done in writing to the vendors at the same time and is handled and documented by the TA. TA then said that we need to do this because part of the audit testing process is to review the RFPs, RFQs, Grant applications, etc., and determine if we have followed our own rules.

CM Acquaviva clarifies she is not against getting more information; she wants the direction to come from Council. **MOTION: CM Vail / CM Ball to table. VOTE: All Ayes.**

Q. REPORTS – MAYOR AND COUNCIL MEMBERS

CM Korn – Should also complement Bonnie and her staff for the quick response and corrective action on repairs to Richards and Kramer Lanes. Bonnie will pass it on to staff.

Mayor also complemented her on her purchase of the portable amplifier. TA said the credit goes to Denine, who does a great job of shopping for the best deal. CM Korn continued that this March 2, and her review is due in April. Need to send out review paperwork for TA. That will then be on first agenda in April. Link to videos on website was there and then gone and now it is back. We need the Mailboat out on a regular basis. Communicate with constituents. Vail said we all travel different roads and we should feed that information back to TA. What are

the crown and arrow painted in gold? Korn said they are distance markings. TA said the nursery on Weber (Sunscape) has put a stop bar in orange across road for his customers.

CM Acquaviva, CM Ball, CM Vail – nothing

CM Krieger – Culverts on Atz in Sugar Pine SD, also on Corey south of Malabar, east side. There is drop from edge of road. CM Vail said Corey Road south of Hall Road on east side, there are two big dips. Atz Road between Homestead Lane and Corey Road, there is dirt washing into ditch because it needs sod. Last thing, he likes the discussion type of meeting we had the last meeting and would like to have one every month.

Mayor – Several items; because he has the information on Homestead and Lineberry; the four foot (4') culverts and headwalls were put in by county. The County used dirt filled rip rap bags. Mayor suggests patching the ones that have fallen and just pour concrete over them where they are failing at Atz and Homestead Lane.

Mayor then explained why he had the discussion meeting on 2/17/15. There were many things he learned from that. The minutes and agendas still can't be seen on website. Much discussion; Mayor said prior Mayor Phil Crews couldn't access it and he is computer savvy. Korn said the minutes and agendas are there; he has accessed them. CM Vail said he also found them and he is not computer savvy. Krieger said he was doing research.

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

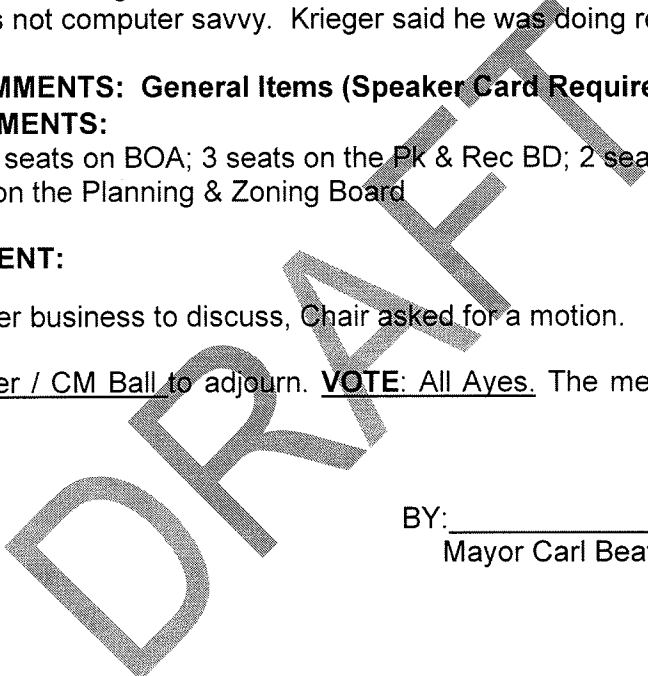
S. ANNOUNCEMENTS:

Openings: 2 seats on BOA; 3 seats on the Pk & Rec BD; 2 seats on the T&G Committee; 2 seats on the Planning & Zoning Board

T. ADJOURNMENT:

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

MOTION: CM Krieger / CM Ball to adjourn. **VOTE:** All Ayes. The meeting adjourned at 10:22 PM.



BY: _____
Mayor Carl Beatty, Council Chair

ATTEST BY:

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

Date Approved: _____

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; 180-30 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)

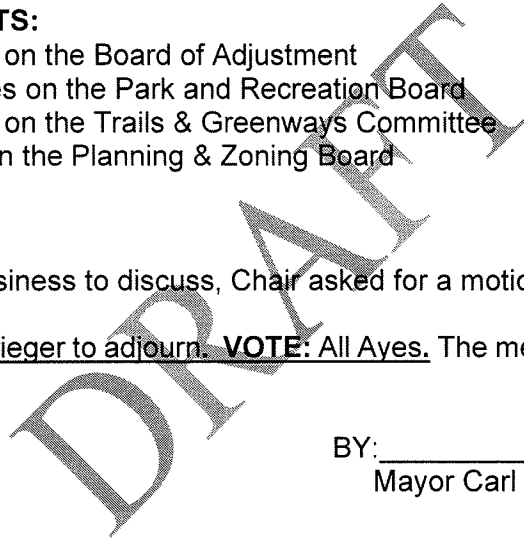
P. ANNOUNCEMENTS:

- 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: _____

TRANSCRIBED BY:

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 2
Meeting Date: April 20, 2015

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Annual Performance Review

BACKGROUND/HISTORY:

Each member of Council and the Mayor should have evaluated and met privately with the Administrator prior to this meeting.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

None

ACTION OPTIONS:

Action by Council.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 3
Meeting Date: April 20, 2015

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Town Council Accept Administrator's Memo dated 4/2/15 (Korn)

BACKGROUND/HISTORY:

Council Member Korn asked that this be placed on the agenda after the annual performance review. Any change to the employment contract would require approval on both sides. The memo submitted on April 10 appears to modify the contract.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Contract of Employment
Memo from Administrator

ACTION OPTIONS:

Action by Council.

EMPLOYMENT AGREEMENT FOR TOWN ADMINISTRATOR

THIS AGREEMENT made and entered into on the 23rd day of April, 2007 by and between the Town of Malabar, Florida, a municipal corporation of the State of Florida, (hereafter the "Town"), and Bonilyn Wilbanks-Free (hereafter the "Employee").

ARTICLE I

Term of Employment

- 1.01 The Town employs Employee, and Employee has accepted employment with Town upon the conditions set forth herein for an indefinite term, beginning on the date of approval of this Agreement by the Town and continuing until terminated under the provisions of Article V hereof.

ARTICLE II

Employee's Duties

- 2.01 The Employee is hereby employed as the Town Administrator the Town of Malabar, Florida. Employee shall perform those duties specified in the Charter of the Town.
- 2.02 In addition to the duties specified in the Town Charter, Employee shall also perform such duties and functions as may be from time to time assigned to the Town Administrator by the Town Council.
- 2.03 Employee agrees to perform her duties to the best of her abilities, and to perform those duties in a manner consistent with the best interests of the Town.
- 2.04 The Employee shall devote substantially all of her productive time, ability, and attention to the business of the Town, both during normal business hours and outside normal business hours as the business of the Town may require. To that end, it is agreed, that as compensation for time spent on Town business during non-business hours, the Employee shall be entitled to take compensatory time off as she shall deem appropriate during normal business hours. Employee shall not be involved in non-employee connected business for remuneration without approval of the Town Council.

ARTICLE III

Compensation

- 3.01 Town agrees to pay Employee for her services rendered an annual base salary of \$65,000.00 payable in installments at the same time as other employees of the Town are paid.
- 3.02 After the 2006/2007 fiscal year and during continued employment, the Employee shall be entitled to a salary increase as an adjustment to base salary when salary increases are authorized for other Town employees. The Employee's salary increase shall be measured at a minimum by a percentage increase comparable to the percentage increase for other municipal employees. Nothing in this section shall preclude the Town from exceeding such percentage or providing bonuses for exemplary performance by the Employee.
- 3.03 The Town shall not at any time during the term of this agreement reduce the salary, compensation or other financial benefits of Employee, except as part of an across-the-board reduction for all employees of the Town. In such event, the Employee's salary reduction shall be proportioned to the reduction for other Town employees.

ARTICLE IV

Employee Benefits

- 4.01 Employee shall be entitled to participate in any Employee benefit plan established by the Town.
- 4.02 The Town agrees to pay all contributions to a Town pension program provided other Town employees.
- 4.03 Employee shall annually accrue sick leave on the same basis and at the same rate as other Town employees. Employee may participate in any refunding program for sick leave pursuant to this agreement.
- 4.04 Employee will earn 20 days vacation annually, accrued at 1-2/3 day per month.
- 4.05 Employee will be provided, at the expense of the Town a term policy on Employee's life in an amount equal to 2 times her salaried amount. The beneficiary of such policy shall be named by the Employee.
- 4.06 The Town agrees to provide a health insurance policy coverage at the same rate as other Town personnel. Such coverage shall be effective and in full force throughout the term of this Agreement.
- 4.07 A. The Town hereby agrees to budget for and to pay the travel and subsistence expenses for travel outside Brevard County of Employee for official travel, meetings and occasions to adequately pursue the necessary official and other functions for the Town,

including but not limited to the Annual Conferences of the International City/County Managers Association (ICMA), the Florida City/County Managers Association (FCCMA), the state league of municipalities and such other national, regional, state and local government groups and committees thereof which Employee serves as a member.

B. The Town also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for her professional development and for the good of the Town.

C. The Town shall pay Employee's annual ICMA and FCCMA dues.

D. Town agrees to budget and to pay Employee a monthly car allowance of \$600.00.

4.08 The Town shall defend, save harmless and indemnify Employee against any tort, otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Town Administrator. The Town shall have the right to compromise and settle any such suit, and shall pay the amount of any settlement or judgment rendered upon any such claim or suit. The amount payable by the Town under the provisions of this paragraph shall be limited to the maximum amount payable under the Town errors and omissions and liability insurance coverage.

ARTICLE V

Termination and Severance Pay

5.01 In the event employment of Employee is terminated at the pleasure of the Town or for any reason other than those set forth in paragraph 5.02 of this article, the Employee shall receive a lump sum cash payment equal to 3 months aggregate salary computed as of the time of termination. Employee shall also receive full pay for all unused vacation and half pay for accrued sick leave.

5.02 In the event Employee is terminated because of conviction of a felony, conviction of any crime involving dishonesty or for Employee's malfeasance in office or willful breach or habitual neglect of her duties, then the Town shall have no obligation to pay aggregate future salary but shall pay accumulated vacation and sick leave as provided in 5.01 above.

5.03 In the event Employee voluntarily resigns her position with the Town, then Employee shall give the Town thirty (30) days written notice in advance, unless the parties otherwise agree. Employee will be entitled to full pay for all accumulated vacation and half pay for accrued sick leave at her then-current salary. The employee shall not receive any compensation pursuant to Section 5.01 if she voluntarily resigns, except she shall be entitled to compensation for work performed before the effective date of her resignation.

5.04 If after the employee's termination or resignation, she is called upon for consultation, to attend a deposition, trial, hearing, or to otherwise provide services related to or arising out of the performance of any of her duties as Town Administrator, she shall be

) compensated at the prorated hourly rate based upon the base salary she received at the time of her termination or resignation.

ARTICLE VI

General Provisions

- 6.01 Employee may be given an annual consolidated written evaluation by the Town Council. The Town Council will provide Employee the opportunity to remedy critical comments, if any, affecting Employee's evaluation. The Town Council will assist the Employee in such remedies.
- 6.02 A. The text herein shall constitute the entire agreement between the parties.
- B. This agreement shall be binding upon and inure to the benefit of her heirs at law and executors of Employee.
- C. This agreement shall become effective on the date of its approval by the Town Council.
- 6.03 If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- 6.04 Any Town issued equipment shall be returned upon termination.

IN WITNESS WHEREOF, the agreement has been entered into the day and year first written above.

Sharon White
Witness

Andrea D. Kelley
Witness

ATTEST:

Juson Kabana
Town Clerk

Bridget W. Banks-Fine
Employee

THE TOWN OF MALABAR

By: Thomas M. Eichenberg

Sec. 2-226. Recreational and park fund established; expenditures.

There is hereby established a fund to be known as the recreational and park fund. All monetary gifts or donations to the town for recreation or park purposes shall be paid in to said fund. Expenditures from the recreational and park fund shall be in the manner and form provided by laws of Florida or the town for expenditures of municipal funds. No monetary gift or donation to the town for public purposes shall be expended for any purpose other than recreation and parks.


(Ord. No. 92-14, § 6, 12-7-92)

Sec. 2-227. Liability of town.

Nothing in this division shall be construed as authorization and empowering the parks and recreation board to impose any liability of any nature, financial or otherwise, upon the town, and the powers of the board are limited to advisory only.

(Ord. No. 92-14, § 7, 12-7-92)

Secs. 2-228—2-299. Reserved.



ARTICLE IX. TOWN ADMINISTRATOR

Sec. 2-300. Office of town administrator.

(a) The town council, by majority vote, shall appoint a town administrator for an indefinite term and shall establish his or her compensation of employment by a written contract. The town administrator must be a resident of Brevard County.

(b) The town administrator shall serve at the will and pleasure of the council and maybe removed by the affirmative vote of a majority of council.

(c) The town administrator, subject to prior approval by the town council, shall designate by letter filed with the town clerk, an acting town administrator to perform his or her duties during any temporary absence or disability. If the town administrator fails to make such a designation, the town council may appoint an acting town administrator. The acting town administrator shall be selected from among town employees.

(d) The town administrator shall be responsible to the council for all the administration of town affairs placed in his or her charge by this article for the Town Charter. The town administrator shall have the following powers and duties:

- (1) To hire, and when he or she deems it necessary for the good of the town, suspend or remove any town employees or officers, except those appointed by the council. He or she may authorize the head of any department under his or her direction or supervision to exercise such powers within the department, office or agency.
- (2) Fix the compensation of town officers and employees within the pay schedules established by the town council.

- (3) Direct and supervise the administration of all town departments, offices, and agencies, except as otherwise provided by this Charter, Ordinances or by law.
 - (4) Attend meetings of town council and participate in discussions, but with no right to vote.
 - (5) See that all laws, provisions of this Charter, ordinances and acts of the town council subject to enforcement by him or her or by officers subject to his or her direction and supervision, are faithfully executed.
 - (6) Prepare and submit the annual budget, budget message, and capital program to the council, together with such other reports concerning town operations as the town council may require; and administer the adopted budget, review of work programs and allotments, make requests for appropriation transfer. He or she shall also perform all functions as purchasing agent or appoint such agent.
 - (7) Submit complete reports on the finances and administrative activities of the town.
 - (8) Keep the council fully advised of the financial condition and future needs of the town and make such recommendations to the council concerning the affairs of the town as he deems desirable.
 - (9) Execute contracts on behalf of the town unless the council or Charter provide otherwise.
 - (10) Perform such other duties as are specified in the Charter or as may be required by the council or as may be required by the town's employee manual.
- (e) The town council shall have the power to review any action of the town administrator, and may direct the town administrator in any of his or her actions.
- (f) The town council may enter into a written contract with the town administrator so long as said contract is not in conflict with this article.
- (Ord. No. 03-15, § 1, 12-1-03)

TOWN OF MALABAR

MEMORANDUM

Date: April 02, 2015 15-TA-006

To: Mayor & Council

From: Bonilyn Wilbanks, Town Administrator *BW*

Ref: Extension of Employment Agreement

I am submitting my request at this time that my Employment Agreement only be extended for 4 months. I am planning to retire and would like to leave after August 19, 2015 which is the closing date of our last payroll in August. While I have enjoyed serving the residents of the Town of Malabar, I am also looking forward to enjoying retirement and doing consultant work on a job by job basis. I know that my contract only requires 60-day notice; however using this time frame affords me the opportunity to complete the Sandhill Trail grant project and prepare the budget worksheets leading into the FY 2015/16 budget process. It also lets me get my social security benefits in place and health insurance.

If you have not filled the Town Administrator's position by this date, I would always help by remaining on a month-to-month basis so that the transition is one that is smooth and you are not pressured in your selection process.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 4
Meeting Date: April 20, 2015

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Approve 1st Meeting of Month with Attorney; 2nd Mtg without (Mayor)

BACKGROUND/HISTORY:

The Mayor has asked for this to be discussed at the February 17, 2015 meeting and is now requesting action. This was on the 3/16 and 4/6 agendas but postponed for a full Council discussion.

FINANCIAL IMPACT:

N/A

ATTACHMENTS: none

ACTION OPTIONS:

Staff requests Action.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 5
Meeting Date: April 20, 2015

Prepared By: Debby Franklin, C.M.C., Town Clerk/Treasurer

SUBJECT: Approve Attorney drafting all Ordinances & Resolutions (Mayor)

BACKGROUND/HISTORY:

The Mayor has asked for this to be discussed at the February 17, 2015 meeting and is now requesting action. This was on the 3/16 and 4/6 agendas but postponed for a full Council discussion.

FINANCIAL IMPACT:

N/A

ATTACHMENTS: none

ACTION OPTIONS:

Staff requests Action.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Meeting Date: April 20, 2015

Prepared By: Debby K. Franklin, C.M.C. Town Clerk/Treasurer

SUBJECT: Appointment of Patrick Voltaire to Alternate Member position on the Trails & Greenways Committee (Reso 07-2015)

BACKGROUND/HISTORY:

Mr. Voltaire is an avid bicyclist and would like to join the Committee and help improve the trail system within Malabar.

The Trails & Greenways Committee supports this appointment.

ATTACHMENTS:

Resolution 07-2015
Application

ACTION OPTIONS:

Staff requests approval of Reso 07-2015.

RESOLUTION 07-2015

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.

WHEREAS, Malabar Town Council has two seats open on their Trails & Greenways Committee; and

WHEREAS, Malabar Town Council desires to make this appointment.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

Section 1. The Town Council of Malabar, Brevard County, Florida, hereby approves the appointment of Patrick Voltaire as an alternate member of the Trails & Greenways Committee for a three year term.

Section 2. The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the Town Clerk to notify the member, the Board Chair and the Board Secretary of this appointment.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 4. This resolution shall take effect upon adoption by Council.

This Resolution was moved for adoption by Council Member _____. This motion was seconded by Council Member _____ and, upon being put to vote, the vote was as follows:

Council Member Grant Ball	_____
Council Member Brian Vail	_____
Council Member Don Krieger	_____
Council Member Dick Korn	_____
Council Member Marisa Acquaviva	_____

This Resolution was then declared to be duly passed and adopted this 20th day of April, 2015.

TOWN OF MALABAR

By: _____

Mayor Carl A. Beatty
Council Chair

ATTEST:

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

(seal)

Approved as to form and content:

Karl W. Bohne, Jr.
Town Attorney

TOWN OF MALABAR

APPLICATION FOR APPOINTMENT TO BOARD/COMMITTEE

NOTE: Florida's Public Records Law, Chapter 119, Florida Statutes states, "It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person." Your application when filed will become a public record and subject to the above statute. In addition, any appointed member of a board of any political subdivision (except members of solely advisory bodies) and all members of bodies exercising planning, zoning or natural resources responsibilities are required to file a financial disclosure form within 30 days after appointment and annually thereafter for the duration of the appointment as required by F.S. Chap. 112.

NAME: PATRICK VOLTAIRE TELEPHONE: 321-288-3328
ADDRESS: 1685 COREY RD, MALABAR, FL 32950
EMAIL: PVOLTAIRE1@CFL.RR.COM

RESIDENT OF TOWN FOR 12 MONTHS OR LONGER: [X] YES [] NO

OCCUPATION: (If retired, please indicate former occupation or profession.)

MECHANICAL DESIGNER, HARRIS CORP.

PROFESSIONAL AND/OR COMMUNITY ACTIVITIES:

AVOID MOUNTAIN BIKE RIDER INTERESTED IN HELPING IMPROVE OUR TRAILS AND GREENWAYS

ADDITIONAL INFORMATION/REFERENCES:

Please select the Board that you would like to serve on by indicating first choice & second choice:

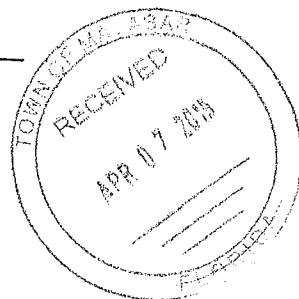
- Board of Adjustment Planning & Zoning
Parks & Recreation X Trails & Greenways

By Town Charter, most boards require removal of members after 3 successive absences.

Signature of Applicant

Date 3-9-15

Please return this form to: Town Clerk
Town of Malabar
2725 Malabar Road
Malabar, FL 32950-4427
Email: townclerk@townofmalabar.org



Note: If you need more information concerning the duties of these Boards, please contact the Town Clerk. Please attach a copy of your resume to this application. You will be notified of the date of the Town Council Meeting that your application will be considered for appointment. You will need to plan to attend the Council Meeting.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 7
Meeting Date: April 20, 2015

Prepared By: Bonilyn Wilbanks, Town Administrator

SUBJECT: Budget Transfers for FY 2014/2015 (Reso 08-2015)

BACKGROUND/HISTORY:

These changes are being made to provide funds for the appropriate line items within the same Department for expenses that have occurred since October 1, 2014 and up to March 31, 2015 that were not anticipated at budget time or that came in more than what was budgeted for..

FINANCIAL IMPACT:

NONE

These adjustments do not represent any budget increases.

ATTACHMENTS:

Resolution No. 08-2015
Budget Transfer Authorizations.

ACTION OPTIONS:

Staff requests approval of Resolution 08-2015.

RESOLUTION 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.

WHEREAS, it is necessary from time to time to amend the budget to record adjustments approved by Council and to accurately reflect the departmental expenditures.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF MALABAR OF BREVARD COUNTY, FLORIDA that;

SECTION 1. Amend the Budget Amount in Finance and Administration (513) Department. Transfer from and to the Accounts indicated on the attached Budget Transfer Authorizations to accurately record the revisions to the Finance and Administration Department.

SECTION 2. Conflict
All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 3. Effective Date.
This Resolution shall take effect immediately upon passage.

This Resolution was moved for adoption by Council Member _____ The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Council Member Grant Ball _____
Council Member Brian Vail _____
Council Member Don Krieger _____
Council Member Dick Korn _____
Council Member Marisa Acquaviva _____

This Resolution was then declared to be duly passed and adopted this 20th day of April, 2015.

TOWN OF MALABAR
By:

(seal)

Mayor Carl A. Beatty,
Council Chair

ATTEST:

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

Approved as to Form and Content:

Karl W. Bohne, Jr.,
Town Attorney

TOWN OF MALABAR
BUDGET TRANSFER AUTHORIZATION
Fiscal Year 2014/2015

Department: 513 Finance & Administration							
Account No.	Description	Approved Amended Budget	Balance thru 03/31/2015	Transfer Dec	Transfer Inc.	Amount Left to Spend	New Budget Total
513.3100	Professional Services - Elections	4,000	2,634.13	2,000.00		634.13	2,000
513.4000	Travel & Per Diem	2,000	1,915.40	1,000.00		915.40	1,000
513.4900	Other Current Charges & Obligations	4,000	3,105.61	2,000.00		1,105.61	2,000
513.3400	Other Contractual Services	10,000	-3,650.00		5,000.00	1,350.00	15,000
	CheckSum	20,000		5,000.00	5,000.00		20,000

DEPARTMENT EXPLANATION: (Give reason for transfer from each account.)

Transfers from (513.3100, 513.4000, 513.4900) to (513.3400) to cover additional expenses approved by Council for assistance from Averrett Warmus in closing the fiscal year and setting up budget in QuickBooks Pro

Town Clerk/Treasurer: _____
Approved by Council at RTCM 04/20/2015

Date: 04/20/2015 Approved by Town Administrator: _____
RESO. No. 08-2015

Date: 04/14/2015