

ORDINANCE NO. 2009-29

AN ORDINANCE OF THE TOWN OF MALABAR , BREVARD COUNTY, FLORIDA RELATING TO ROADS; AMENDING SECTION 13-39; PROVIDING FOR AN EXCEPTION; ADDING A NEW SECTION 13-39.1; PROVIDING FOR THE DEDICATION OF EASEMENTS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR SEVERABILITY AND CONFLICTS; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES AND AN EFFECTIVE DATE.

WHEREAS, the Town of Malabar requires a dedication of sufficient right -of-way as a precondition for the issuance of a building permit for a permitted structure on property that abuts an unimproved or unaccepted right-of-way within the Town ; and

WHEREAS, there are certain instances where, due to restrictions placed upon land, a governmental entity which owns conservation land may not divest itself of such land through dedication or otherwise; and

WHEREAS, as an alternative to the dedication of land the governmental entity which owns conservation land can grant easements to the Town in lieu of right -of- way dedication; and

WHEREAS, the Town's current road ordinance does not specifically address the granting of easements in lieu of right- of -way dedication; and

WHEREAS, the Town Council finds that it is in the best interest of the citizens of the Town of Malabar to allow, under limited circumstances the granting of easements in lieu of right- of -way dedication.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. Chapter 13, Article II, section 13-39 is amended as follows:

“Sec. 13-39. Precondition to issuance of driveway permit--Dedication of sufficient right-of-way.

Except as provided in section 13-39.1, As a precondition for the issuance of any building permit for a permitted structure on property that abuts an unimproved or unaccepted right-of-way within the Town of Malabar, Brevard County, Florida, the owner of the property for which such permit is requested must agree to dedicate that portion of his property which abuts said right-of-way or unaccepted road such that the town can achieve its goal of acquiring rights-of-way as required by the Town Land Development Code and Comprehensive Plan.”

SECTION 2. A new section 13-39.1 is hereby added to Article II of Chapter 13 of the Code of Ordinances of the Town to read as follows:

“Sec. 13-13.1. Authorization for the acceptance of easements in lieu of dedicated right-of way under certain circumstances.

In those instances where land abutting an unimproved or unaccepted right-of-way within the Town is owned by a governmental entity, and such land is conservation land, and due to restrictions placed upon the land prohibiting the owner from divesting itself of ownership of such

land, the Town is authorized to accept an easement, in lieu of dedication, of that portion of the property which abuts said right-of-way or unaccepted road."

SECTION 3. Severability. In the event a court of competent jurisdiction shall hold or determine any or part of this ordinance invalid or unconstitutional, the remainder of this ordinance shall not be affected.

SECTION 4. Conflict. All ordinances or resolutions or part of ordinances or resolutions in conflict herewith are hereby repealed.

SECTION 5. Codification. It is the intention of the Town Council of the Town of Malabar, Brevard County, Florida, and it is hereby provided that the provisions of this ordinance shall become and made part of the Code of Ordinances of the Town of Malabar.

SECTION 6. Effective Date. This ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council member Rivet. The motion was seconded by Council member Vail and, upon being put to a vote, the vote was as follows:

Council Member Nancy Borton	<u>Aye</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Steven (Steve) Rivet	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Aye</u>

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 7th day of December, 2009.

BY:
TOWN OF MALABAR

Thomas M. Eschenberg
Mayor Thomas M. Eschenberg, Chair

1ST READING: 11/16/09
2ND READING: 12/07/09

ATTEST:

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

APPROVED as to form and content:

Karl W. Bohne, Jr.
Karl W. Bohne, Jr.
Town Attorney

