

ORDINANCE 2011-36

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE TOWN; AMENDING SECTION 13-42; DELETING THE CAP OF TEN YEARS FOR ROADWAY IMPROVEMENT PAYBACK; DELETING THE 6% PER ANNUM INTEREST ON THE ROAD PAYBACK TO THE ROAD BUILDER; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, public hearings as prescribed by Florida Statutes have been duly held in accordance with the laws of the State of Florida;

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

SECTION 1. Section 13-42 of the Code of Ordinances of the Town is hereby amended in full to read as follows:

“Sec. 13-42. Roadway Improvement Process.

(A) Any person (applicant) desiring to improve a public right-of-way within the Town of Malabar shall follow the process described herein:

- (1) Obtain a copy of the town's master roadway design standards and permit forms.
- (2) Provide the town with a right-of-way survey prepared by, signed and sealed by a Florida registered surveyor.
- (3) Provide the town with a set of design plans and specifications signed and sealed by a Florida registered engineer and complying with the town's master roadway specifications.
- (4) Obtain a roadway improvement permit from the town.
- (5) Obtain administrative approval of the town engineer, stamped "APPROVED" plans and specifications, town construction inspection requirements and any governmental permits and mitigating requirements necessary to proceed with the roadway construction.
- (6) Retain a Florida or Brevard County licensed contractor, meeting the town's licensing and insurance requirements, to perform the construction in accordance with the plans, specifications and permits.
- (7) Schedule inspection of the work by the town engineer at (1) completion of clearing and rough grading, (2) completion of drainage infrastructure and satisfactory test reports of roadway sub-grade and (3) final inspection.
- (8) Provide certified soils laboratory test reports indicating that the completed construction or construction progress complies with the roadway plans, specifications and permits.
- (9) Provide, to the town, "as built" drawings of the roadway improvements certified by a Florida registered surveyor or engineer.
- (10) Request, in writing, the town engineer to examine the completed facilities and certify that the work

meets the requirements of the Town Code and master roadway specifications.

(11) Provide written documentation to the town of roadway survey, design, permitting, testing, mitigation, construction and inspection costs that may be reasonably considered to be included in the costs of improving the right-of-way.

(12) Request Malabar to place on the next regular town council agenda consideration of formally adopting the roadway and the completed improvements as public facilities and assume the maintenance responsibilities.

(B) After determination that the roadway design meets current town standards the town engineer is authorized to administratively approve the construction of the roadway and stamp the plans. After administrative approval the owner shall deposit with the town the applicable fees for the town roadway improvement permit, the inspection fee estimated by the town engineer and furnish the proposed roadway construction schedule. After such determination the town staff will:

(1) Perform, as a minimum, inspections of the laboratory test results and three (3) inspections of the construction work. The first inspection is at the time of completion of land clearing, the second is at completion of drainage and sub-base shaping/compaction and a final inspection at completion of the roadway work and receipt of documentation of final costs, test results and "as built" drawings.

~~(2) Provide, to the applicant, after review of the documented costs, a schedule of payment costs for the next ten (10) years, after acceptance by the town council, for property owners abutting the improved roadway and that may participate in the roadway improvements costs.~~

~~(3)~~ 2 Collect, from property owners abutting that segment of the roadway improved a pro-rata share of the roadway improvement costs plus six (6) percent per annum, from and after the date of roadway acceptance by the town. Payment to the town treasurer is required prior to issuance of any building permit for an improvement on such abutting property.

~~(4)~~ 3 Keep a record of payments to the town and disbursement of funds to the applicant.

~~(5) Refund to applicant any funds not required for town inspection costs and, on an annual basis, any funds collected by the town as a pro-rata share of abutting property owner's costs plus the six (6) percent per annum for the time value of money.~~

~~(6)~~ 4 Place on the next regular town council agenda, after receipt of the town engineer's certification of roadway construction completion, an item for consideration of acceptance of the completed segment of the roadway for operation and maintenance.

~~(7)~~ 5 The town council shall not unreasonably withhold acceptance of the completed roadway.

SECTION 2. Codification. This ordinance shall be forwarded to the Municipal Code Corporation for incorporation into the Malabar Code of Ordinances..

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder shall not be affected and it shall be presumed

that the Town Council of the Town of Malabar did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Council would have enacted the remainder of this ordinance without said invalid or unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 6. This ordinance shall become effective immediately upon its adoption after the second public hearing.

This ordinance was moved for adoption by Council Member Rivet and was seconded by Council Member McKnight and, upon being put to a vote, the vote was as follows:

Council Member Carl Beatty	<u>Aye</u>
Council Member David White .	<u>Absent</u>
Council Member Steven (Steve) Rivet	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Excused</u>

This ordinance was then declared duly passed and adopted this 6 day of JUNE, 2011.

TOWN OF MALABAR

By: Thomas M. Eschenberg
Mayor Thomas M. Eschenberg
Council Chair

First Reading: 05/2/2011
Second Reading: 06/06/2011

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

(seal)

Approved as to form, and legal sufficiency by:
Karl W. Bohne, Jr.
Karl W. Bohne, Jr.
Town Attorney