



TOWN OF MALABAR
Road Improvement Regulations
Chapter 13, Malabar Code

rev. 1.3.05

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Sec. 13-37. Definitions.

As used herein, the following terms shall have the following meanings:

Building permit shall mean any permit for construction of any structure on property located within the town, whether it is a principal or accessory structure.

Improved road shall mean the path upon which vehicular traffic is intended to travel and upon which the travel way has been altered from its natural state in order to permit use as a road.

Interim roadway shall mean any road, street, or right-of-way which is improved pursuant to this division on a right-of-way, or on an improved but unaccepted road which is less than sixty (60) feet in width and accepted for maintenance by the town. The improved roadway shall be temporary until such time as all the parcels adjacent to the improved roadway have all received permits to construct a permitted structure.

Local streets/roads shall mean any street or road other than an arterial roadway, major collector street, minor collector street located within the town.

Owner shall mean the individual, entity or, in the event that the property is owned by a partnership or an aggregation of individuals or entities, all of the partners or persons or entities who have a present, possessory interest in such property. In the event that an application for building permit is made by an individual or entity that holds a leasehold interest in the fee, that individual or entity shall be considered the "owner" for the purposes of this division.

Permitted structure shall mean any structure for which a permit is required pursuant to the Town's Land Development Code, whether it is a principal structure, accessory structure or any combination thereof.

Road shall mean the path upon which vehicular traffic is intended to travel in order to obtain ingress and egress to and from real property. As used in this division, the terms "road" and "street" are interchangeable and intended to have the same meaning as expressed herein.

Travel way shall mean any right-of-way, dedicated to the town, for the purpose of providing ingress and egress by motor vehicles or other method into privately or publicly owned real property.

Unaccepted road shall mean any road, street, or right-of-way that has not been accepted by the town for maintenance by affirmative vote of the town council resulting in such

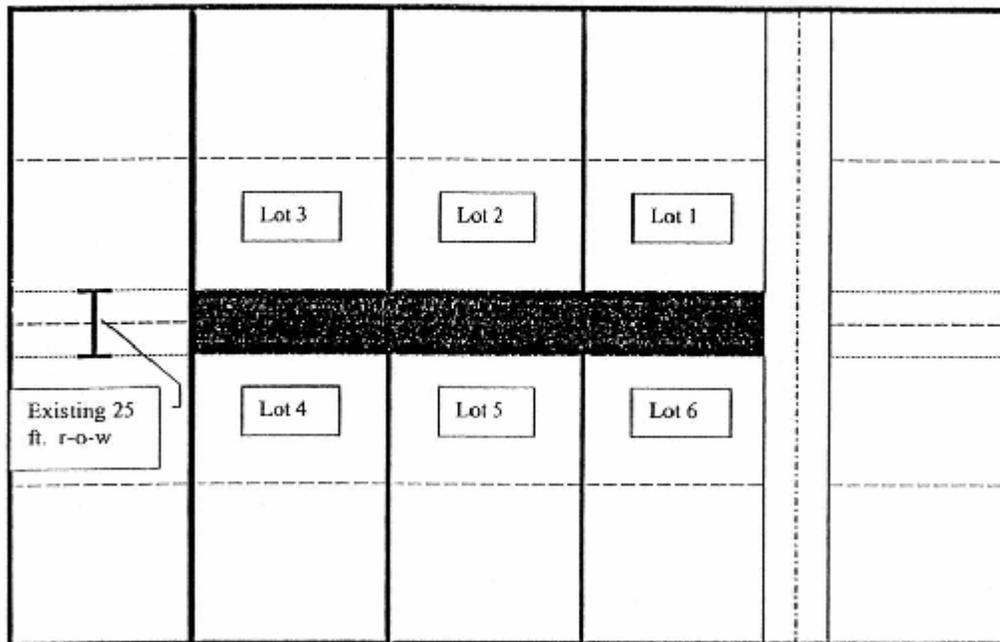
street, road or right-of-way to be approved and included on the official list of "accepted" roads within the town.

(Ord. No. 01-01, § 1-2, 2-5-01; Ord. No. 03-01, § 1, 2-24-03)

Sec. 13-38. Precondition to issuance of building permit--Completion of road.

- (a) As a precondition for the issuance for any permit for a permitted structure on property that abuts an unimproved right-of-way or unaccepted local street/road within the Town of Malabar, Brevard County, Florida, the owner of the property for which such permit it requested must provide for the improvement of the local street/road from which a person will obtain ingress and egress to and from such property from the nearest improved and accepted road continuously in the most direct route (or route otherwise approved by the Town) on public rights-of-way through and including the furthest boundary of the lot of Record on which the principal structure is to be constructed. (See Illustration No. 1 below)

Illustration #1



(Illustration No. 1 only depicts the length or distance for which the right-of-way must be improved if the owner of Lot No. 4 requests a boundary permit or other development order).

In determining whether any parcel "abuts" such unaccepted local street/road for purposes of this chapter, any property that lies contiguous to an existing unimproved local street/road or right-of-way and which is intended to be used as ingress and

gress to said property, shall be deemed to abut the unimproved local street/road or right-of-way.

- (b) Ownership of contiguous lots.
 - (1) In the event that such owner owns more than one (1) lot of record on the same local street/road and if such lots are contiguous, such local street/road shall be completed only through the furthest boundary of the lot on which the principal structure is to be wholly constructed.
 - (2) However, should such principal structure not be located wholly on one (1) lot, or should the owner desire to construct accessory uses, ponds or outbuildings (accessory to the principal structure) on the contiguous lot, then the local street/road shall be improved through the furthest boundary on which such accessory building to be constructed.
- (c) The board of adjustment may only grant a variance to the requirements of subsection (b)(1) and (2). Notwithstanding the authority granted to the board of adjustment in section 1-12 of the Town of Malabar Land Development Code the below stated procedures shall in all respects be utilized for a variance to subsection (b)(1) and (2). In order to authorize a variance under this section the board of adjustment must find the following:
 - (1) That special conditions and circumstances exist and that the presence of which would make complying with section 13-38(b)(1) or (2) unreasonable;
 - (2) The special conditions and circumstances are not caused in any way by the owner or applicant;
 - (3) That such variances will not be injurious or detrimental to the public welfare;
 - (4) That the variance granted is the minimum variance that will make possible the reasonable use of the land;
 - (5) The board of adjustment may impose additional reasonable conditions and safeguards that it deems appropriate;
 - (6) The board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.

(Ord. No. 01-01, § 1-3, 2-5-01; Ord. No. 03-01, § 2, 2-24-03; Ord. No. 03-05, § 2, 6-16-03)

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

As a precondition for the issuance of any building permit for a permitted structure on property that abuts an unimproved twenty-five (25) foot right-of-way or unaccepted road 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 sixty (60) foot rights-of-way. In no event shall the interim roadway provisions contained hereinbelow apply to: The right-of-way requirements for either minor or major subdivisions; arterial roadways such as U.S. Highway 1, Malabar Road (SR 514) and Babcock Street (SR 507);

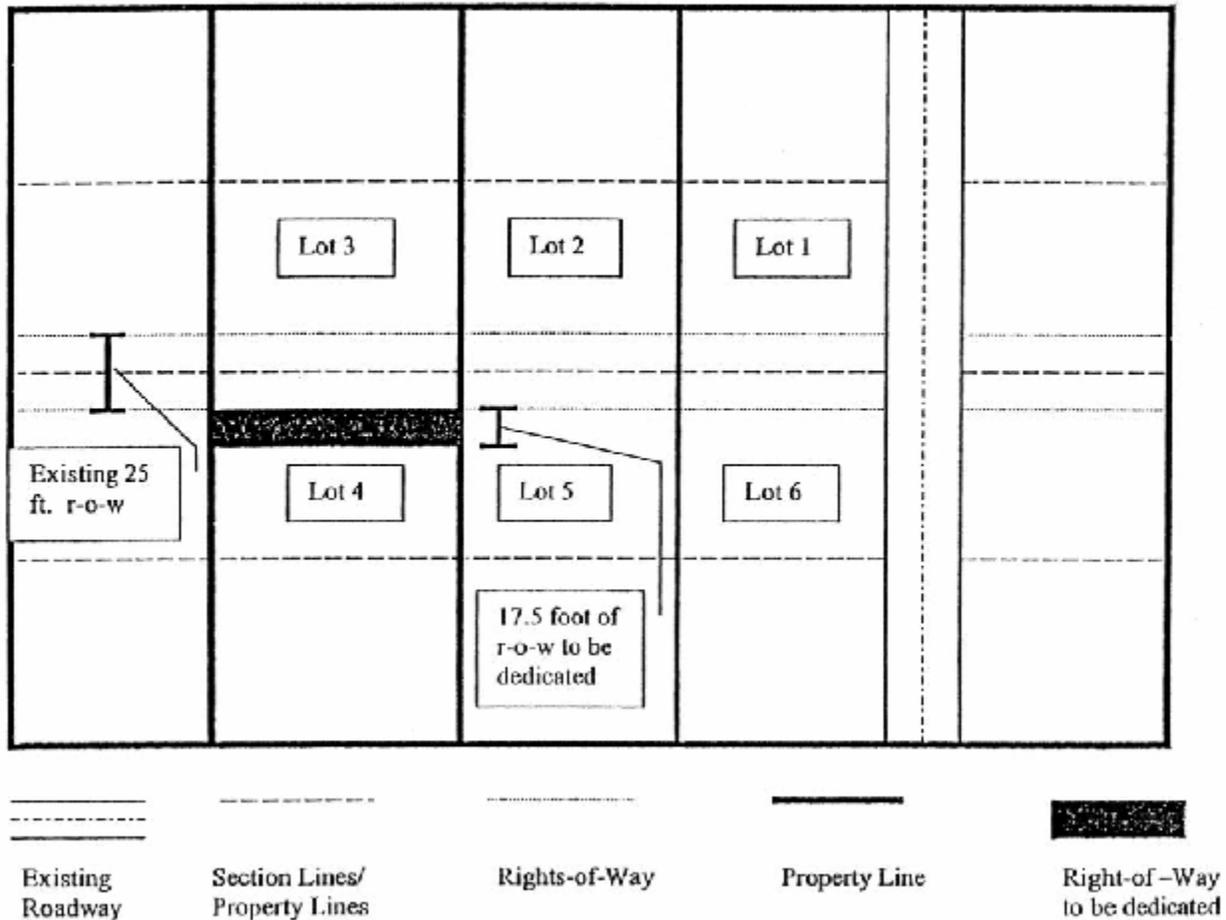
major collector streets such as Corey Road, Weber Road, Marie Street, Briar Creek and Jordan Boulevard; minor collector Streets such as Atz Boulevard, Hall Road, Old Mission Road, and Benjamin (Reese) Road; local streets where a fifty (50) foot or sixty (60) foot right-of-way exists; or to any property owner who has the ability to dedicate the property necessary to meet the existing right-of-way requirements as required by the Town Land Development Code and Comprehensive Plan.

Only landowners whose property abuts a right-of-way which is less than sixty (60) feet wide shall be required to dedicate additional property as a right-of-way. Prior to the dedication, the landowner shall seek approval of the town council for constructing the interim roadway. In no event shall the issuance of the road permit be inconsistent with the permitted structure's use. The decision of whether to approve such a roadway is within the sole discretion of the town council.

Once the landowner receives the town council's approval and dedicates the right-of-way required by this division, the landowner may construct the interim roadway along the existing twenty-five foot (25) right-of-way or unaccepted road.

The amount of additional right-of-way to be dedicated by the owner is dependent on the location and width of the existing right-of-way or unaccepted road. If twelve and one-half (12 1/2) feet of the existing twenty-five (25) foot right-of-way or unaccepted road is located on each side of the section line or property line, then the property owner shall dedicate an additional seventeen and one-half (17 1/2) feet of right-of-way, such that the dedication will result in thirty (30) feet of right-of-way on his side of the section line or property line. (See illustration No. 2 below.)

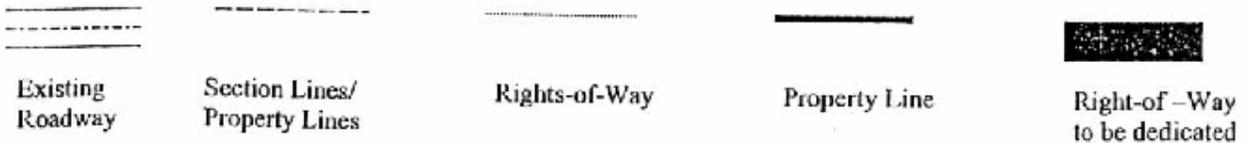
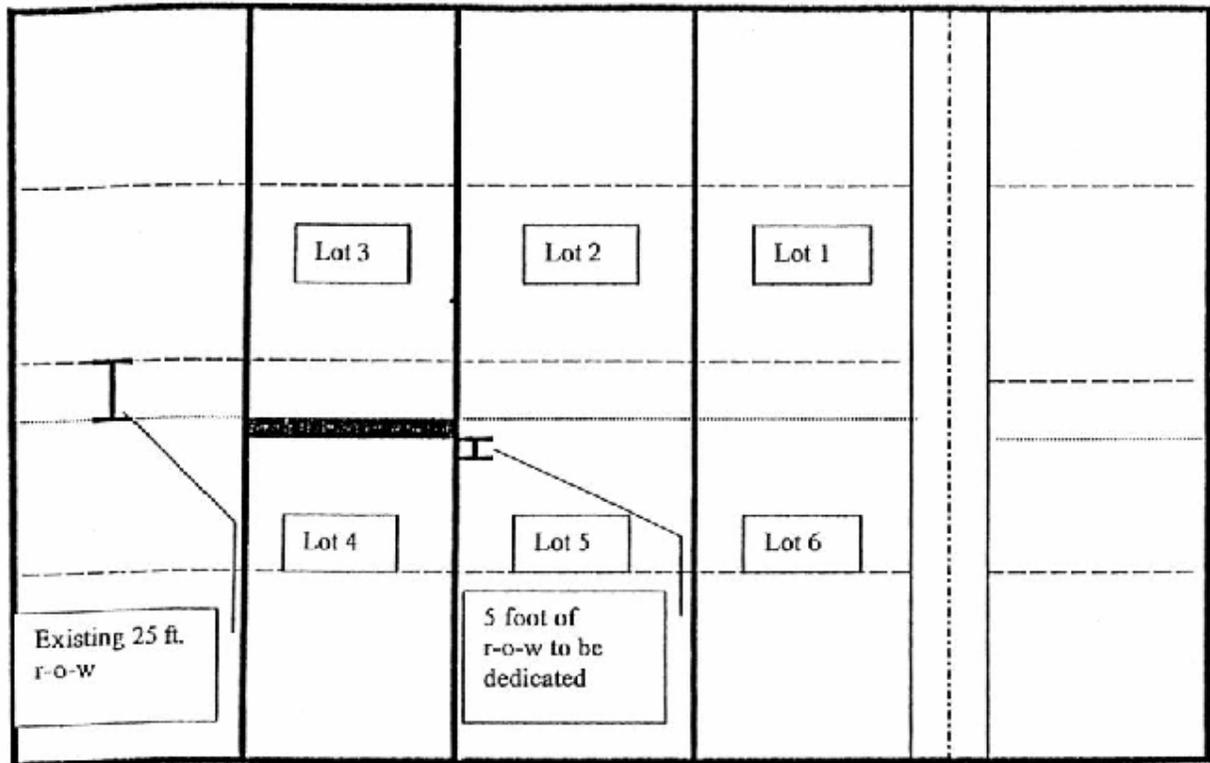
Illustration #2



(Illustration No. 2 assumes that the owner of Lot No. 4 has requested a permit to build an interim roadway on the existing twenty-five (25) foot right-of-way. It also assumes that the existing twenty-five (25) foot right-of-way is equally divided by the section or property line. The illustration evidences the seventeen and one-half (17 1/2) feet that the owner of Lot No. 4 would have to dedicate to the town in order for the town to acquire the sixty (60) feet of right-of-way required by Comprehensive Plan and Land Development Code.)

If the dedication of the unimproved right-of-way or unaccepted road resulted in all of the existing twenty-five (25) foot right-of-way or unaccepted road being dedicated from property located on the owner's side of the section line or property line, then the owner shall only be required to dedicate five (5) feet of right-of-way so that town will eventually acquire the sixty (60) feet of right-of-way required by the Town's Comprehensive Plan and Land Development Code in the most straight and direct route. (See illustration No. 3 below.)

Illustration #3

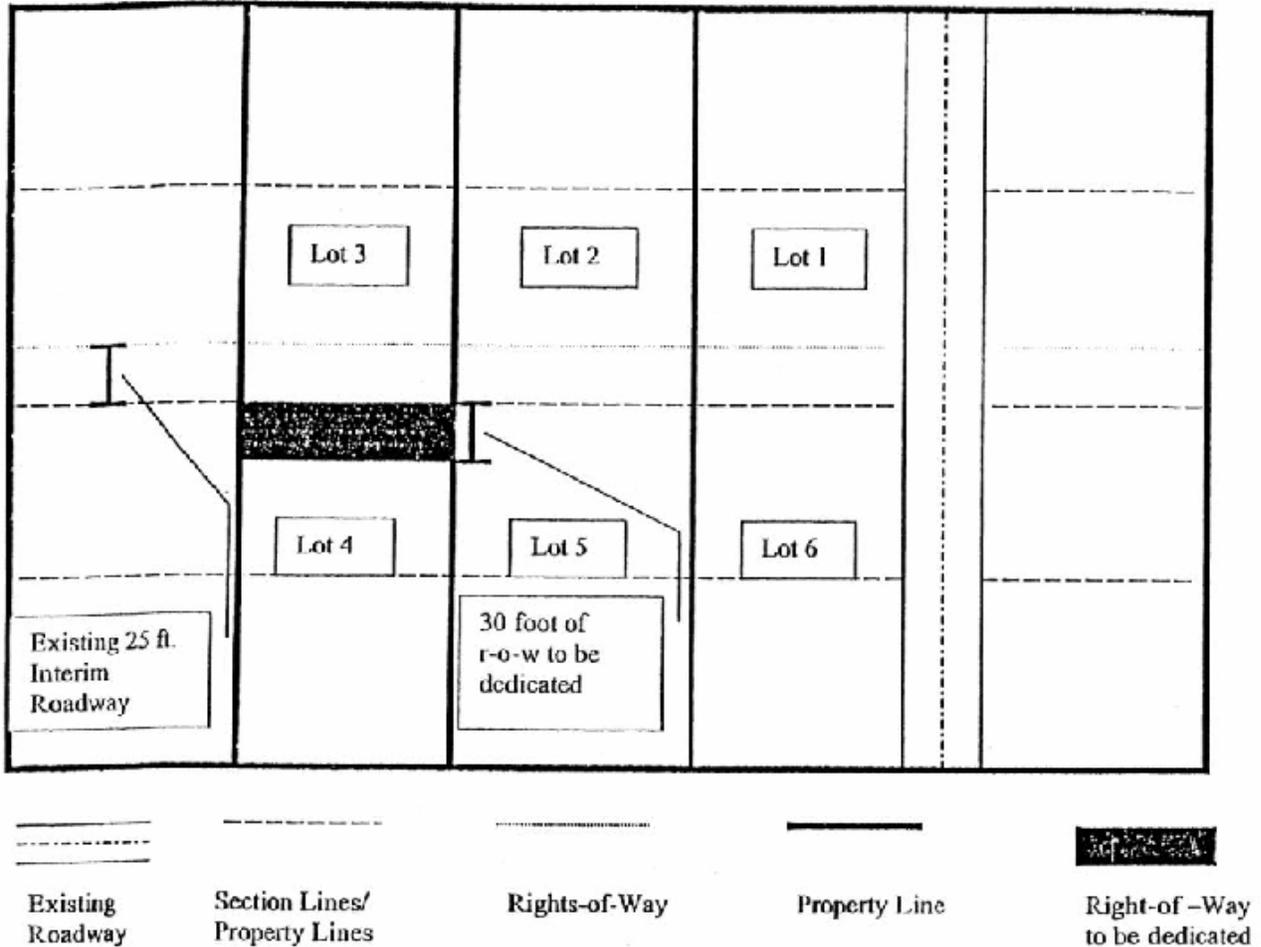


(Illustration No. 3 depicts the property that must be dedicated to the town if the owner of Lot No. 4 desires a building permit. Illustration No. 3 assumes that the owner of Lot No. 4 has requested a permit to build an interim roadway on the existing twenty-five (25) foot right-of-way. It also assumes that the entire twenty-five foot (25) right-of-way was originally dedicated to the town by the owner of Lot No. 4 or his predecessor in interest. The illustration evidences the five (5) feet that the owner of Lot No. 4 would have to dedicate to the town so that the town may acquire the sixty (60) feet of right-of-way required by Comprehensive Plan and Land Development Code.)

If the owner on the opposite side of the section line ever decides to use the road for ingress and egress for his residential property, he must dedicate an additional thirty (30) feet of right-of-way so that the town can achieve its goal of obtaining the sixty (60) feet of right-of-way required by the Town's Comprehensive Plan and Land Development Code. (See

illustration No. 4, below.)

Illustration #4

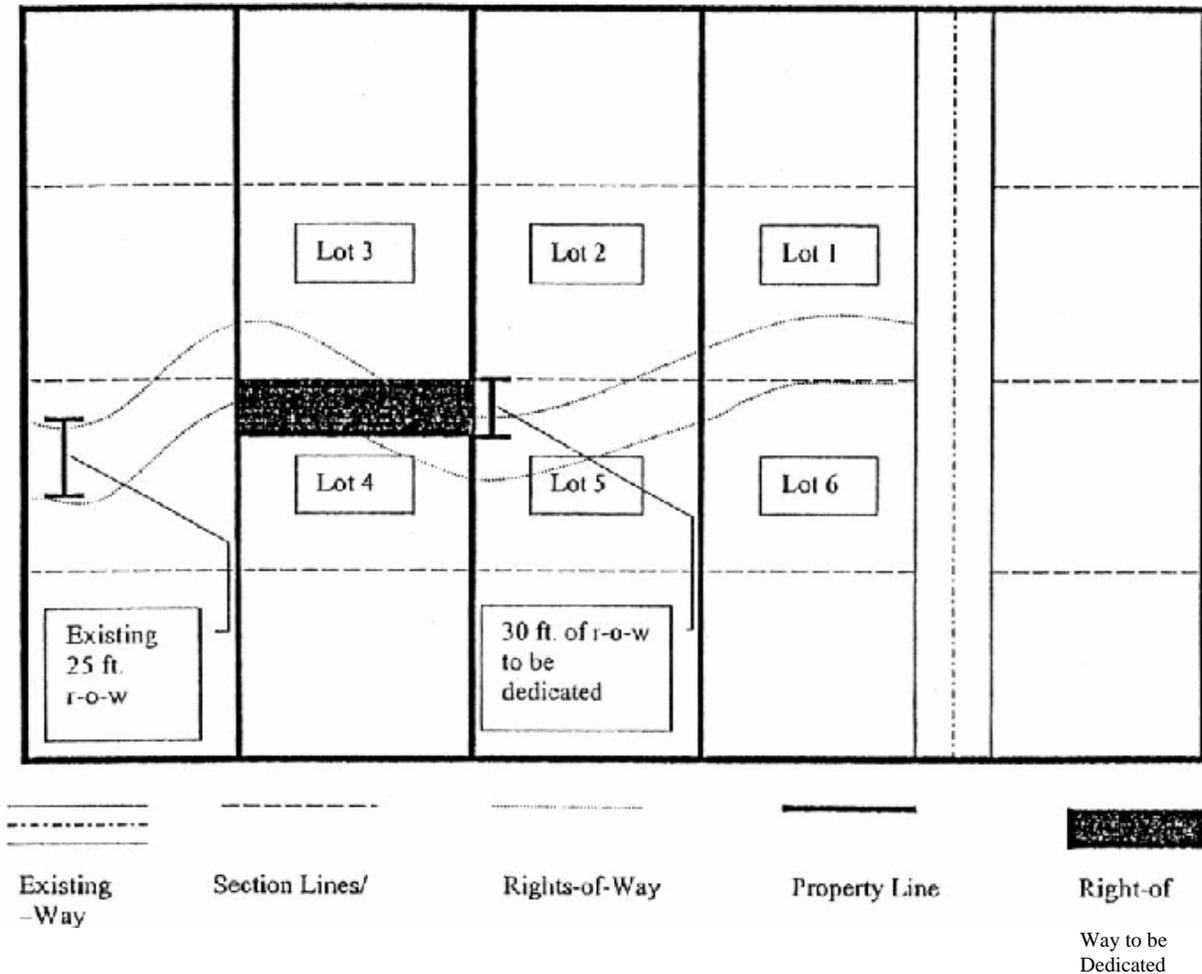


(Illustration No. 4 depicts the property that must be dedicated to the town if the owner of Lot No. 4 desires a building permit. Illustration No. 4 assumes that the owner of Lot No. 4 has requested a building permit for a structure on Lot No. 4 and he wants to use the interim roadway built by the owner of Lot No. 1 for ingress and egress to the property. It also assumes that the entire twenty-five (25) foot right-of-way was originally dedicated to the town by the owner of Lot No. 1 or his predecessor in interest. The illustration evidences the thirty (30) feet or right-of-way that the owner of Lot No. 4 would have to dedicate to the town in order for the town to acquire the sixty (60) feet required by Comprehensive Plan and Land Development Code.)

If the right-of-way dedication or building of the unaccepted road resulted in an unequal distribution of land on each side of section line or property line, then landowners on each side of the section line shall dedicate that portion of their property which would result in thirty (30)

feet of right-of-way on each side of the section line or property line; otherwise a building permit will not be issued. (See illustration No. 5 below.)

Illustration #5



(Illustration No. 5 depicts the property that the owner of Lot No. 4 must be dedicated to the town as a right-of-way before a building permit will be issued. Illustration No. 5 assumes that the original dedication of the right-of-way was dedicated such that there was an unequal distribution of right-of-way along the section line.)

All landowners whose property abuts the twenty-five (25) foot right-of-way which is being or is improved pursuant to the provisions of this division must comply with the dedication provisions aforementioned. No building permits shall be issued unless the landowner dedicates the required right-of-way.

Interim roadways are only permitted when property owners are unable to provide the sixty (60) feet right-of-way required by the Town's Land Development Code and Comprehensive Plan. Once a building permit is issued for all the parcels abutting the interim roadway, the owners of said parcels must, by any means necessary, pay the assessments necessary to bring the roadway up to the standards for sixty (60) foot rights-of-way in effect when the permit was issued.

(Ord. No. 01-01, § 1-4, 2-5-01)

Sec. 13-40. Cost of improvement (bond).

Each owner who applies for a building permit, either personally or through an agent or contractor, shall complete an application for a road permit, in the form approved by the town council and shall execute a written agreement with the Town of Malabar, Brevard County, Florida, in a form approved by the town council and town attorney, to construct a road as described hereinabove in accordance with the town's standards. The entire cost of constructing such road shall be the responsibility of the owner and, prior to the issuance of such road permit, the owner shall post a cash bond with the town. The amount of the bond shall be set by the town council after receiving public bids for said improvements and shall be equal to the estimated cost of completion of the improvement plus twenty (20) percent of such amount. The procedure for establishing the road bond shall be established by town council. Procedure shall be adopted by resolution and may be amended by resolution of the town council from time to time, as needed.

The applicant shall have thirty (30) days from the date the bond is set to post said bond. Failure to post a bond within thirty (30) days shall result in revocation of all road and building permits issued.

Any person desiring to appeal any decisions made by the town council related to bonds shall do so by filing a notice of appeal with a court of competent jurisdiction as required by the laws of the State of Florida. All procedural requirements for taking an appeal to a court of competent jurisdiction must be complied with by the party making the appeal.

(Ord. No. 01-01, § 1-5, 2-5-01)

Sec. 13-41. Road permit application and fee.

In order to obtain a road permit, an applicant must complete a road permit application. The application for a road permit shall be in a form approved by the town and shall include the following:

- (1) Such surveys and drawings as are required by the standards attached hereto as Exhibit "A" or "B", whichever is applicable. The standards set forth in Exhibit "A" and "B" may be amended from time to time by resolution of the town council of the town.
- (2) Such reports as to soil composition as are required by the standards attached

hereto as Exhibit "A" or "B", whichever is applicable. The standards set forth in Exhibit "A" and "B" may be amended from time to time by resolution of the town council of the town.

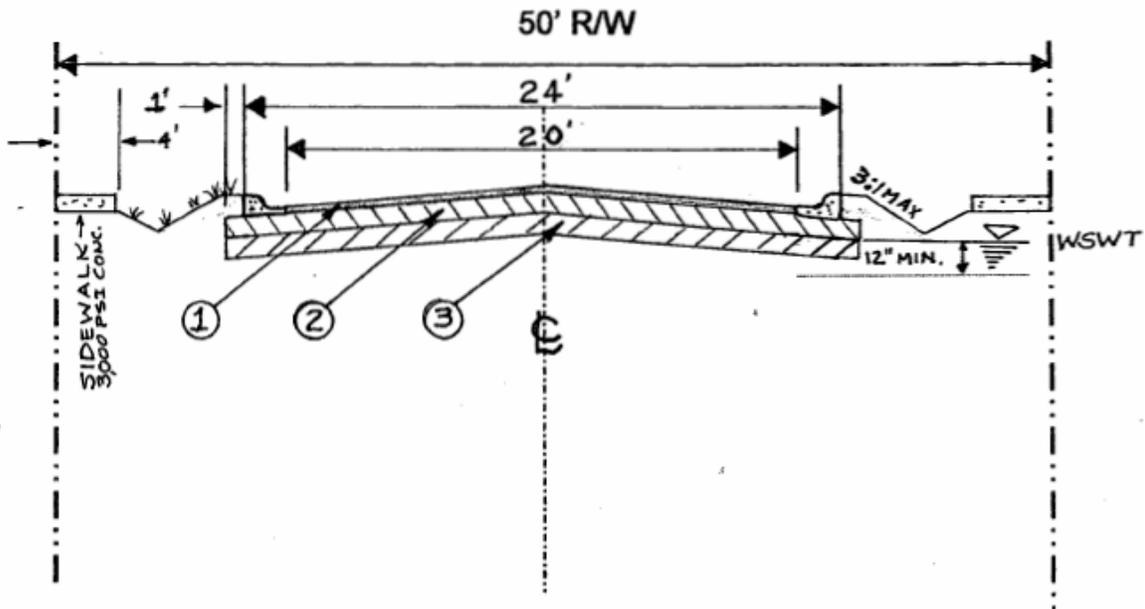
- (3) A written estimate, based upon such surveys and drawings described hereinabove in paragraphs (1) and (2), which estimate shall contain a sufficient description of the work to enable the town engineer and building official to determine that the proposed improvement is consistent with the specifications of the town.

The town council shall set the fee for such road permit, which fee may be amended from time to time by town council by resolution. No action shall be taken on behalf of the applicant until a completed road application permit is filed with the town clerk and the applicable application fee is paid.

Upon receipt of a completed application and fee, the town clerk shall forward the application package to the town engineer. Upon receipt of the completed road permit application package, the town engineer shall make a recommendation to town council as to the appropriate bond that shall be required from the applicant as set forth in section 34-40 of this division.

(Ord. No. 01-01, § 1-6, 2-5-01; Ord. No. 03-01, § 3, 2-24-03)

EXHIBIT "A"
TYPICAL PAVED ROAD SECTION WITH CURBS FOR 50' WIDE R/W

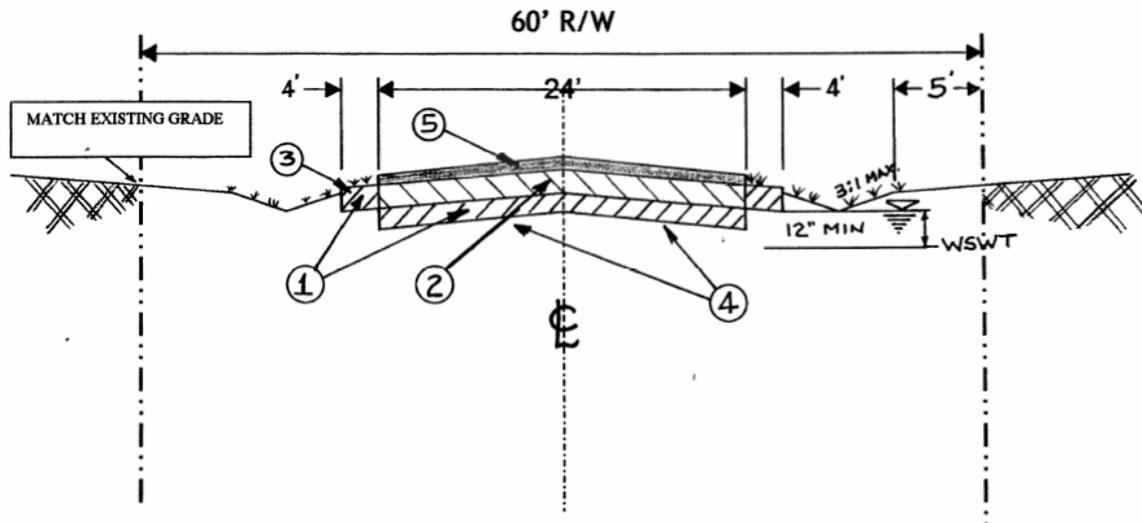


CLEAR & GRUB 50' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES

- 1 CAP ROAD W/MINIMUM 1.5" THICK TYPE S-1 OR TYPE III ASPHALTIC CONCRETE SURFACE (MINIMUM 1500 PSI MARSHALL)
- 2 BASE MINIMUM 6" THICK COMPLYING WITH FDOT "BASE THICKNESS AND OPTION CODES"
- 3 STABILIZED 8" THICK SUB-BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40
- 4 STABILIZED SHOULDERS BOTH SIDES AND SOD ADJACENT TO THE PAVEMENT MINIMUM 2' WIDE
- 5 CURB & GUTTER TO BE 3,000 PSI MIN. CONCRETE
- 6 DRAWING IS NOT TO SCALE

EXHIBIT "B-1"

TYPICAL PAVED ROAD SECTION FOR 60' WIDE R/W

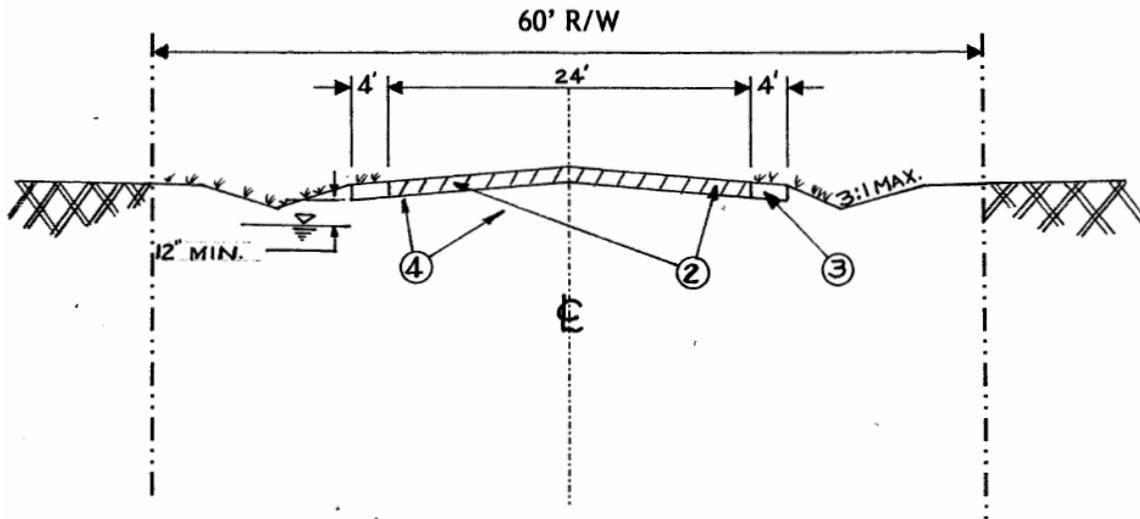


CLEAR & GRUB 60' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES. DISPOSE OF ALL DEBRIS OFF SITE.

1. STABILIZED & MECHANICALLY MIXED 8" THICK ROAD SUB-BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40
2. BASE MINIMUM 6" THICKNESS (COMPLY WITH FDOT BASE THICKNESS AND OPTION CODES)
3. STABILIZED SHOULDERS BOTH SIDES AND SOD ADJACENT TO THE PAVEMENT MINIMUM 2' WIDE AND ON SWALE BANKS. SWALE SIDE SLOPES MAX 3:1.
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT TO 98% DENSITY PER AASHTO T-180
5. CAP ROAD W/MINIMUM 1.5" THICK TYPE S-1 OR TYPE III ASPHALTIC CONCRETE SURFACE (MIN. 1500 PSI MARSHALL).
5. DRAWING IS NOT TO SCALE

EXHIBIT "B-2"

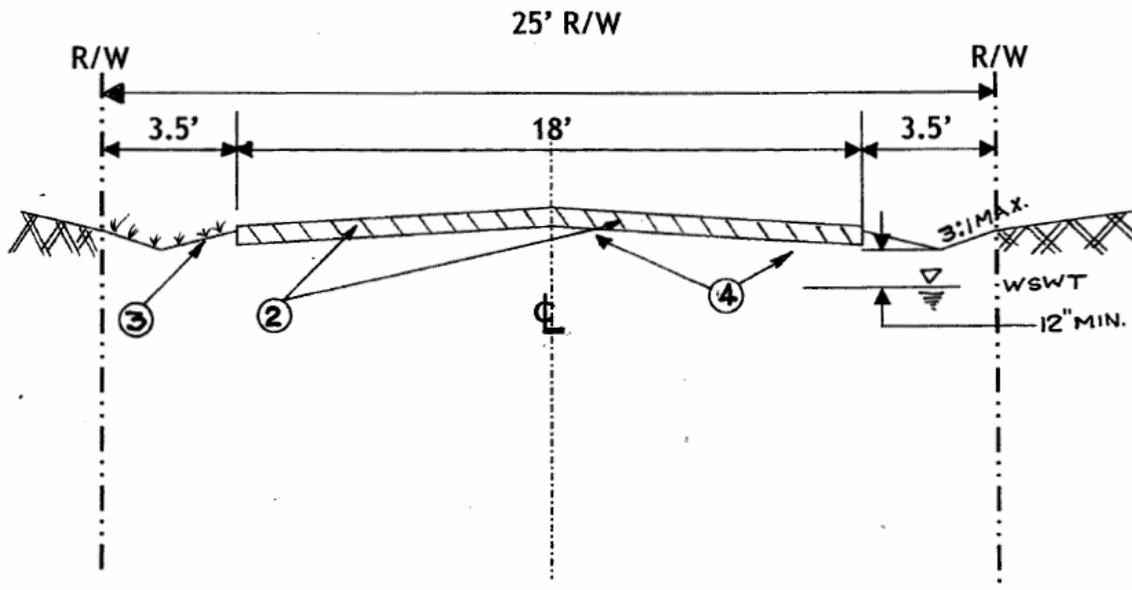
TYPICAL UN-PAVED ROAD SECTION FOR 60' WIDE R/W



1. CLEAR & GRUB 60' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES. DISPOSE OF ALL DEBRIS.
2. STABILIZED AND MECHANICALLY MIXED 8" THICK ROAD-BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40
3. STABILIZED SHOULDERS BOTH SIDES. SOD ADJACENT TO THE PAVEMENT MINIMUM 2' WIDE AND ON SWALE SLOPES.
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT TO 98% DENSITY PER AASHTO T-180
5. DRAWING IS NOT TO SCALE

EXHIBIT "B-3"

TYPICAL UN-PAVED ROAD SECTION FOR 25' WIDE R/W



1. CLEAR & GRUB 25' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES
2. STABILIZED & MECHANICALLY MIXED 8" THICK ROAD-BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40
3. SOD ADJACENT TO THE PAVEMENT MINIMUM 2' WIDE AND ALONG SWALE SLOPES
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT TO 98% DENSITY PER AASHTO T-180
5. DRAWING IS NOT TO SCALE

Sec. 13-42. Improvement process – Bid process, Alternatives.

a. Any person desiring to improve a public right-of-way shall choose one of the following alternatives;

1. If the person desires the Town to construct the improvements then upon receipt of the recommendation by the Town Engineer concerning the appropriate bond the Town Council shall then direct the Town Engineer to compile all necessary specifications for offering a public bid for the required road improvements. If the person chooses this alternative, then the provisions of Section 13-40 of this code shall apply.

At the next regularly scheduled meeting of the Town Council, after receipt of bid specifications from the Town Engineer, the Town Council shall direct the Town Clerk to offer for public bid the improvements as specified. The bidding process shall be conducted in strict compliance with the laws of the State of Florida; or

2. If the person desires to construct the improvement themselves then the person shall apply for and obtain a road permit and the person desiring to improve a public right-of-way shall engage the services of a Florida licensed engineer to design the roadway to current Town of Malabar standards and shall solicit proposals from a Florida licensed contractor for construction of the roadway in accordance with the design.

If the Town Engineer determines that the design meets current Town standards and that the proposals submitted are reasonable and inline with pricing, the Town Engineer is authorized to administratively approve the construction of the roadway.

After administrative approval by the Town Engineer the owner shall deposit with the Town the funds to construct the roadway plus twenty percent (20%) of such amount. The applicant shall have thirty (30) days from the date the amount is set to deposit the funds with the Town. Failure to do so will result in the revocation of all road and building permits issued.

The Town Engineer shall within ten (10) days of receipt of an inspection request, inspect the roadway construction progress and shall authorize payment to the contractor after the Town Engineer is satisfied that the work complies with the Town standards and the design.

For purposes of reimbursement and refunding the individual expending sums to complete the roadway improvement, said individual's engineer shall certify the design, permitting, inspection and construction costs to the Town.

(Res. No. 2004-04, § 1, 4-5-04)

Sec. 13-43. Final report of improvements.

Upon notice of completion of road improvements, the town engineer shall provide to the town council a final report, in writing, certifying that the improvements have been completed in accordance with the established standards of the town.

No improvement shall be accepted by the town until a final report, certifying that the improvements meet the established standards of the town, has been provided to the town council and approved.

(Ord. No. 01-01, § 1-8, 2-5-01)

Sec. 13-44. Cost certification of improvement.

At the conclusion of the construction of the road improvement, the town council shall certify to the town clerk the total costs expended for design, construction and administrative expenses for the road project. All records reasonably required by the town council to establish the costs expended for the road project shall be furnished by the owner upon request. The town council shall certify the costs of such road improvements and enter into the minutes of the town council the actual costs of such improvements as determined by the town council. In no event shall the town council certify costs that are excessive or unreasonable.

Once the certified costs have been finally determined as set forth herein, such costs shall be entered on the minutes of the town council meeting and a certificate attesting thereto shall be prepared and executed by the mayor of the town and chairperson of the town council and delivered to the town clerk, who shall record such amount in the official records of the town. The certificate shall contain the name of the owner, a legal description of the property, for which the building permit is to be used, a legal description of the improved street, the street address of the property and the certified costs of performing the improvement.

(Ord. No. 01-01, § 1-9, 2-5-01)

Sec. 13-45. Return of unused portion of bond.

Within ninety (90) days of completion of the road improvement and certification of costs being made, the town council shall return any unused balance of the cash bond previously deposited to the party who posted the bond, or their assignees.

(Ord. No. 01-01, § 1-10, 2-5-01)

Sec. 13-46. Standards for road improvements.

The standards for the contractors to complete road improvements on sixty (60) foot rights-of-way and twenty-five (25) foot rights-of-way are respectively set forth in Exhibit "A" and "B" to this division, and are incorporated herein. The standards may, from time to time,

be modified by the town council, by resolution, provided that no such modification shall affect any owner who has filed an application for a building permit prior to the effective date of any such change in the standards.

(Ord. No. 01-01, § 1-11, 2-5-01)

Sec. 13-47. Reimbursement for expenses incurred by owner in connection with the construction of road improvement.

The certified costs, as determined pursuant to sections 13-43 and 13-44 hereinabove, shall be reimbursed to the individual expending such monies to complete the improvement, or their assignees (provided such assignment is recorded as hereinbelow described), by monies obtained from property owners who subsequently apply for building permits on property adjacent to or abutting any street that has been improved by the owner seeking reimbursement, provided that such improvement has been accepted by the town and further provided that the construction of the improvement was commenced after the effective date of this division [February 5, 2001] and in accordance with the terms and conditions of this division.

The method of reimbursement shall be as follows: In order for any property owner to obtain a development permit for a property that abuts any street that had previously been fully or partially improved pursuant to the terms and conditions set forth in this division, such owner must, at the time of application for a development permit, post a cash bond with the town in accordance with the formula hereinbelow described.

An owner who wants a development permit for a parcel of property that abuts an improved street or section thereof, that had been previously completely improved pursuant to this division, shall pay an amount equal to their pro rata share of the total certified costs of the completed permitted section based upon a formula whereby the total certified costs of the improved sections are multiplied by a fraction, the numerator of which shall be the number of front feet of such owner's parcel that abuts the fully improved section, and the denominator of which shall be the number of total front feet of all parcels that abut such section. These monies shall be paid to the town as a precondition for issuance of a building permit.

The monies received by the town from such owner shall be disbursed to the owners of record, or assigns of record, who expended the certified costs to improve such street, pro rata, based upon the amount by which such reimbursed owners expended funds in excess of what would have been their pro rata share of the total improvement as determined by the same manner described hereinabove, less an amount equal to fifty dollars (\$50.00) or one (1) percent of the monies received from the owner making such reimbursement, whichever is greater, which monies shall be retained by the town to cover its administrative costs. Such monies shall be disbursed to such owner within thirty (30) days after receipt of a written request for reimbursement by the owner.

(Ord. No. 01-01, § 1-12, 2-5-01)

Sec. 13-48. Improvement of unaccepted portion of partially improved road.

When an owner wishes to obtain a development permit for a property that abuts a street that has not been completely improved pursuant to this division, such owner shall follow the procedure described hereinbefore in sections 13-38, 13-39, 13-40, 13-41, 13-42, 13-43, 13-44, 13-45 and 13-46 to construct the improved street through and including the owner's furthest property line from such improved street if the street had not been previously completed through the owner's furthest property line. Said owner shall be entitled to reimbursement for his expenses as set forth in section 13-46 of this division. (Ord. No. 01-01, § 1-13, 2-5-01)

Sec. 13-49. Improvement required if land partially abuts unaccepted road.

If an owner wishes to obtain a development permit for a property that partially abuts a street that has been improved pursuant to the terms of this division, after the effective date of this division [February 5, 2001], such owner shall complete the street through such owner's furthest property line using the procedure set forth in sections 13-38, 13-39, 13-40, 13-41, 13-42, 13-43, 13-44, 13-45 and 13-46 and shall be entitled to reimbursement from subsequent property owners who build on that portion of the street improved by such owner in accordance with the terms of this division. Additionally, such owner shall further be obligated to reimburse the prior owner(s) who expended certified costs to improve the street that partially abuts such owner's property in accordance with the pro rata formula described hereinabove.

(Ord. No. 01-01, § 1-14, 2-5-01)

Sec. 13-50. Reimbursement record.

All monies to be reimbursed to owners who have previously expended certified costs pursuant to this division shall be returned to such owners at owner's last known address within thirty (30) days. It shall be the responsibility of the owner seeking or expecting reimbursement to provide the town with his address if other than that which is set forth in his application for a building permit. Owner shall provide such address changes to the town clerk, which shall be entered by the clerk into the certified costs records maintained by the town. The absence of such entry in the official records of the town by the clerk shall create a rebuttable presumption that no such change of address was provided. In the event that such monies reimbursed to owner pursuant hereto are not deliverable due to the failure of owner to provide a proper address to the town, the town clerk shall publish, in a newspaper of general circulation in Brevard County, notice of its intent to forfeit such monies, which notice shall appear in a newspaper of general circulation in Brevard County, Florida, for a period of five (5) consecutive days. The clerk shall retain such monies for a period of thirty (30) days following the last day on which such advertisement appears in a newspaper of general circulation and, after that time, such monies shall be deemed forfeited to the town. In the event that a claim is made to such monies and such claim is verified by the town clerk, then such monies shall be disbursed, less costs of advertising, together with an administrative fee of one hundred dollars (\$100.00) or by resolution of the town council.

(Ord. No. 01-01, § 1-15, 2-5-01)

Sec. 13-51. Assignment.

In the event that any owner desires to assign his rights in the certified costs of road improvements expended by him to any successor in interest to the property of such owner, such owner may file with the town clerk a notice of assignment on a form approved by the town, which notice of assignment shall be recorded by the clerk in the official certified costs records, in which case the clerk shall pay such monies over to the assignee upon reimbursement as set forth hereinabove. Such assignee shall have the same obligation to keep the town clerk informed of any changes of address and the same procedure shall be utilized in the event that reimbursed monies are not deliverable to such assignee, after which time such monies shall be forfeited as described hereinabove. No assignment to such funds may be made to any individual other than a successor in interest to the real property that abuts such street upon which the improvement was made.

(Ord. No. 01-01, § 1-16, 2-5-01)

Sec. 13-52. Levy of special assessments for street paving, construction or hard surfacing.

Pursuant to F.S. Ch. 170, the town council may, from time to time, levy special assessments for paving, hard surfacing, and construction of streets, as well as other purposes permitted by F.S. Ch. 170. The town reserves the right to levy such special assessments from time to time. Furthermore, upon petition signed by the owners of two-thirds (2/3) or greater of the front footage on any street requesting the town council to construct, pave, or hard surface any road within the town, the town council of the town shall, upon a finding by the council that the petition is in sufficient form, substance and execution, order such property to be assessed in accordance with F.S. Ch. 170.

(Ord. No. 01-01, § 1-17, 2-5-01)

Sec. 13-53. Remedies.

In addition to other remedies described in this division and those available at common law, which shall be cumulative herewith, the town council may proceed against any individual violating this division in law and in equity and may obtain from the court mandatory or prohibitive preliminary and permanent injunctive relief. In any action related to this division, in which the town is a party, the town, if it prevails, shall be entitled to recover its reasonable attorney's fees and suit costs, including those associated with any appellate or post-judgment proceedings.

(Ord. No. 01-01, § 1-18, 2-5-01)

Sec. 13-54. Prospective application.

This division shall have prospective application only, and no property owner who expended monies for the improvement of any road or right-of-way within the town prior to the effective date of this division [February 5, 2001] shall have any right or entitlement to reimbursement for such expenses by virtue of this division.

(Ord. No. 01-01, § 1-19, 2-5-01)

Secs. 13-55--13-60. Reserved.

ARTICLE III. ACCEPTANCE OF LOCAL ROADS

Sec. 13-61. Definitions.

As used herein, the following terms shall have the following meanings:

Improved road shall mean the path upon which vehicular traffic is intended to travel and upon which the travel way has been altered from its natural state in order to permit use as a street.

Owner shall mean the individual, entity or, in the event that the property is owned by a partnership or an aggregation of individuals or entities, all of the partners or persons or entities who have a present, possessory interest on such property.

Road shall mean the path upon which vehicular traffic is intended to travel in order to obtain ingress and egress to and from real property. As used in this article, the terms "road" and "street" are interchangeable and intended to have the same meaning as expressed herein.

Travel way shall mean any right-of-way, dedicated to the town, for the purpose of providing ingress and egress by motor vehicles or other method into privately or publicly owned real property.

Unaccepted road shall mean any road, street, or right-of-way that has not been accepted by the town for maintenance by affirmative vote of the town council wherein such street, road or right-of-way is approved and included on the official list of accepted roads within the town.

(Ord. No. 92-5, § 1, 6-19-92)

Sec. 13-62. Local street acceptance.

Any owner of real property located within the town, said property being adjacent to an improved, unaccepted local road, may apply to the town for acceptance of the improved, unaccepted, local road. The application process shall be as follows:

- (1) The applicant shall submit to the town an application for acceptance of

- improved, unaccepted local road. Said application to be approved as to form and content by the town.
- (2) The application for acceptance of an improved, unaccepted local road shall specify the name of the street to be accepted; the length of the street to be accepted; and the number of residential dwellings currently located in the street to be accepted. In addition, a survey containing the required information as set forth in Exhibit "A,"* not more than six (6) months old, of the street to be accepted shall be attached to the application at the time it is submitted to the town.
 - (3) The applicant shall be required to pay an application fee, as established by town council, at the time of submitting the application.
 - (4) Upon receipt of a completed application and survey, the town engineer shall inspect the road for the purpose of determining if the road meets the minimum safety standards adopted by this article and attached hereto as Exhibit "B."
 - (5) If the town engineer determines that said road meets the minimum safety standards, then the town engineer shall recommend to the town council acceptance of said road for all purposes.
 - (6) Upon receipt of a recommendation from the town engineer for acceptance of a local road, the town council may accept said road for maintenance and all other purposes.

(Ord. No. 92-5, § 2, 6-19-92)

Sec. 13-63. Reapplication.

If an application, submitted pursuant to section 13-62 of this article, is denied by council, the applicant, after correcting the condition which resulted in denial of his original application, may submit a request for reconsideration of the original application for acceptance of the improved, unaccepted, local road. If the request for reconsideration is resubmitted within ninety (90) days of council's denial of the original application, the application fee, as required by section 13-62, may be waived.

All requests for reconsideration shall be submitted to the town on a form approved by the town. An application for reconsideration shall be processed according to the requirements of section 13-62 of this article.

(Ord. No. 92-5, § 3, 6-19-92)

Sec. 13-64. Minimum safety standards.

The town hereby adopts minimum safety standards for local roads within the corporate limits of the town. Said minimum standards are attached hereto as Exhibit "B" and may, from, time to time, be amended by resolution of the town council. It is the intention of these safety standards to provide minimum standards for local roads to provide for the safe ingress and egress to local residential properties.

(Ord. No. 92-5, § 4, 6-19-92)

Sec. 13-65. Policy statement and application.

It is the expressed intention of the town, through adoption of this article, to provide a method whereby real property owners within the town, whose property is adjacent to an improved, unaccepted roadway, may have their road accepted by the town for maintenance purposes.

Through adoption of this article, the town is not accepting roads which do not meet the adopted minimum safety standard. Further, local roads which meet current minimum safety standards, but which have not been accepted pursuant to the terms and provisions of this article, are expressly not being accepted by the town for any purpose.

This article is not to be construed as an acceptance of all local roads which meet current minimum safety standards, nor is this article to be construed to reduce the current standards required for new roadways being constructed within the town.

This article shall only be applied to local roads which are improved as of the date of adoption of this article, but are currently unaccepted by the town for maintenance purposes.

All dedicated rights-of-way, within the town, upon which no improvements have been made as of the date of adoption of this article, shall not be considered for acceptance under the terms and conditions of this article.

(Ord. No. 92-5, § 5, 6-19-92)