

RESOLUTION 07-2008

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING EXHIBITS "A" THROUGH "B-3" OF SECTION 13-41 OF THE MALABAR RIGHT-OF-WAY IMPROVEMENT CODE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Engineer reviewed Chapter 13, Division 2, known as the Malabar Right-of-Way Improvement Code and determined the cross section requirements depicted in Section 13-41, Exhibits A through B-3 should be amended to allow minor deviations to the detailed cross sections of improvements within the various road right-of-way improvement widths, road bed widths, and stabilized thickness in Malabar as shown in the Malabar Right-of-Way Improvement Code, Section 13-41, Exhibits A through B-3, and;

WHEREAS, the cross sections in Exhibits A through B-3 describe specific right-of-way improvement widths, road bed widths, and stabilized thickness; and

WHEREAS, environmental considerations such as wetlands, specimen trees and protected species may require minor modification to the right-of-way-improvement standards provided for in those Exhibits; and

WHEREAS, the Town Council is permitted to modify the standards for road improvement from time to time by resolution pursuant to section 13-46 of the Malabar Right-of-Way Improvement Code, and;

WHEREAS, the proposed modification of the standards to the road improvement requirements in this resolution will not diminish the Councils' intent for improving roads within the Town and provide concise requirements for roadway improvements and right of way width.

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

SECTION 1. Exhibits A, B-1, B-2, and B-3 of section 13-41 of the Malabar Right-of-Way Improvement Code are amended by adding the following at the end of each exhibit:

Authorized Modification: The Town Engineer may allow minor modifications or deviations to the cross section of improvements standards for right-of-way improvement widths, road bed widths, and stabilized thickness in Exhibits A through B-3 of the Malabar Right-of-Way Improvement Code upon review and determination that there exists competent evidence of environmental constraints or Agency requirements that make compliance with the cross section standards impracticable. The Town Engineer shall list the environmental or Agency considerations that justify the minor modification in the administrative approval of the Roadway Improvement application. Nothing herein shall be construed to authorize any deviation from the requirements of specific right-of-way dedication required by this code. Furthermore, no modification or deviation authorized herein shall be based on any financial hardship. For purposes herein the term "minor modification" shall mean a modification which will not impede, interfere with, hinder, or otherwise prevent emergency services vehicles access to any property located on the subject right-of-way."

SECTION 2. 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 Resolution shall become and be made a part of the Code of Ordinances of the Town of Malabar, Florida; that the sections of this Resolution may be renumbered or re-lettered to accomplish such intention; and the word "Resolution" may be changed to "Section," "Article" or other appropriate designations.

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

SECTION 4. Should any Section, Clause, or Provision of this Resolution be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the remaining provisions or parts of this Resolution.

SECTION 5. This resolution shall take effect immediately upon its adoption.

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

Council Member Nancy Borton	<u>Nay</u>
Council Member Brian Vail	<u>Nay</u>
Council Member Charles (Chuck) McClelland	<u>Nay</u>
Council Member Jeffrey (Jeff) McKnight	<u>Nay</u>
Council Member Patricia (Pat) Dezman	<u>Not Present</u>

This Resolution was then declared as failed this 28th day of January, 2008.

TOWN OF MALABAR

By: _____
Mayor Thomas M. Eschenberg

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

ATTEST:

Debby K. Franklin
Town Clerk/Treasurer

(seal)