

## ORDINANCE 2021-04

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 13, ARTICLE II, DIVISION 2 OF THE MALABAR CODE OF ORDINANCES RELATED TO STREETS; AMENDING SECTION 13-37 DEFINITIONS; AMENDING SECTION 13-38 PRECONDITION TO ISSUANCE OF BUILDING PERMIT; DELETING SECTION 13.40; AMENDING SECTION 13.41 ROADWAY IMPROVEMENT PROCESS AND ADDING EXHIBITS "B-4", "B-5" and "B-6" TO SECTION 13.41; AMENDING SECTION 13-42 ROADWAY IMPROVEMENT PROCESS; AMENDING SECTION 13-46 STANDARDS FOR ROAD IMPROVEMENTS; AMENDING SECTION 13-47 REIMBURSEMENT FOR EXPENSES INCURRED BY OWNER IN CONNECTION WITH THE CONSTRUCTION OF ROAD IMPROVEMENT; AMENDING SECTION 13-48 IMPROVEMENT OF UNACCEPTED PORTION OF PARTIALLY IMPROVED ROAD; AMENDING; AMENDING SECTION 13-49 IMPROVEMENT REQUIRED IF LAND PARTIALLY ABUTS UNACCEPTED ROAD; DELETING ARTICLE III IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

**WHEREAS**, the Town Council desires to update the Code of Ordinances relating to road improvement requirements by adopting this ordinance.

**NOW THEREFORE BE IT ORDAINED** by the Town Council for the Town of Malabar, Brevard County, Florida:

**SECTION 1.** Chapter 13, Article II, DIVISION 2, Section 13-37 is amended as follows:

### **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 improved and accepted by the Town for maintenance ~~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 /right of way* 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 unimproved 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.

**SECTION 2.** Chapter 13, Article II, Division 2 Section 13.38 is amended as follows:

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

(a)

As a precondition for the issuance for any permit for a new residence or new commercial 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 is requested must provide for the improvement of the local street/road from which a person will obtain primary 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.

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(c)

*Waiver.* The Town Council may grant a waiver to the provisions of section 13-38 (a), (b)(1) and (2).

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(1) The below stated procedures shall in all respects be utilized for consideration of a waiver to subsection (a), (b)(1) and (2). In order to authorize a waiver under this section the town council must find the following:

- a. That special conditions and circumstances exist and that the presence of which would make complying with section 13-38 (a), (b)(1) or (2) unreasonable. Financial or economic reasons, conditions or circumstances shall not be grounds for a waiver under this section;

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(8) Public hearing; Notice upon receipt of an executed application pursuant to this section, the town clerk forthwith schedule a hearing on the application before the town council. Notice of the time and place of the public hearing shall be given to the applicant at least fifteen (15) days prior to the public hearing. Notice of the time and place of the public hearing on the application shall be mailed, at least fifteen (15) days prior to the public hearing, to all affected property owners abutting the road right of way in question.

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**SECTION 3.** Chapter 13, Article II Division 2 is amended, by deleting Section 13.40 in its entirety:

**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)~~

**SECTION 4.** Chapter 13, Article II, Division 2, Section 13.41 is amended to read as follows:

"In order to obtain a road permit, an applicant must complete 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," "B-1," "B-2," or "B-3, ""B-4", "B-5" or "B-6" whichever is applicable. The standards set forth in Exhibit "A" through "B-3" 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," "B-1," "B-2," or "B-3," "B-4," "B-5" or "B-6" whichever is applicable. The standards set forth in Exhibit "A" through "B-6" ~~"B-3"~~ 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.

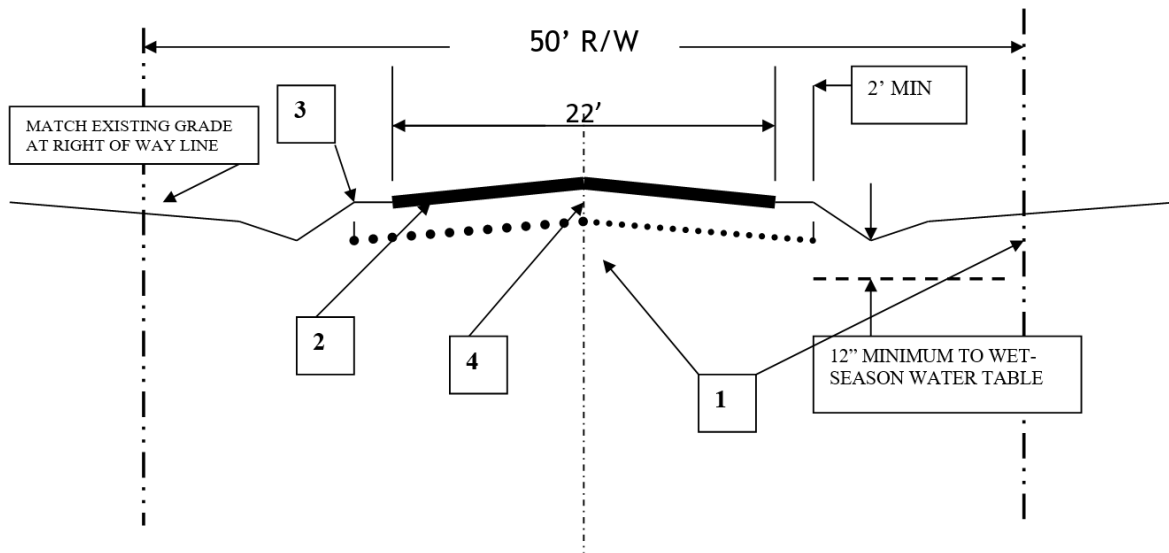
Upon receipt of a completed application and fee, the town clerk shall forward the application package to the appropriate town staff as directed by the Town Manager.

~~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."~~

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## EXHIBIT "B-4"

## TYPICAL UNPAVED ROADWAY SECTION FOR 50' WIDE R/W



1. CLEAR & GRUB 50' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES AND DISPOSE OF ALL DEBRIS OFF SITE.
2. STABILIZED & MECHANICALLY MIXED 8" MINIMUM THICKNESS ROAD BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40. USE FDOT APPROVED MATERIALS OR LOCAL MATERIALS APPROVED BY TOWN ENGINEER.
3. STABILIZED SHOULDERS BOTH SIDES AND SOD ADJACENT TO THE PAVEMENT MINIMUM 2' WIDE AND ON SWALE BANKS. SWALE SIDE SLOPES MIN. 3:1. BACKSIDE OF SWALES MAY BE SEEDED.
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT SOILS TO 98% DENSITY PER AASHTO T-180.
5. DRAWING IS NOT TO SCALE.





**SECTION 5.** Chapter 13, Article II, Division 2, Section 13-42 is amended, 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 with administrative approval by the engineer as directed by the Town Manager.
  - (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 through the Building Department 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, to the Building Department for the Town's designated engineering firm to examine the completed facilities and certify that the work meets the requirements of the Town Code and ~~master~~ roadway specifications and provide a written recommendation that Council accept the road for maintenance.
  - (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 for certification of costs and determination of the linear foot payback amount.



- (12) Request Malabar to place on the next regular town council agenda consideration of formally ~~adopting~~ accepting the roadway and certifying the completed improvement costs as public facilities and assume the maintenance responsibilities.
- (b) After determination that the roadway design meets current town standards the town's designated engineer ~~is authorized to administratively~~ shall approve the construction plans for ~~of~~ the roadway improvement and stamp the plans. After administrative approval the owner shall ~~deposit with the town the~~ pay the applicable fees for the town roadway improvement permit, the inspection fee estimated by the Building Department ~~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) Collect, from property owners abutting that segment of the roadway improved, a pro-rata share of the roadway improvement costs 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.
  - (3) Keep a record of payments to the town and disbursement of funds to the applicant.
  - (4) Place on the next regular town council agenda, after receipt of the town Town's designated engineering firm written ~~engineer's~~ certification of roadway construction completion, an item for consideration of acceptance of the completed segment of the roadway for operation and maintenance.
  - (5) The town council shall not unreasonably withhold acceptance of the completed roadway.

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**SECTION 6.** Chapter 13, Article II, Division 2, Sections 13-46 through Section 13-49 are amended as follows:

**Sec. 13-46. - Standards for road improvements.**

The standards for the contractors to complete local road improvements on sixty (60) foot, fifty (50) foot rights-of-way and twenty-five (25) foot rights-of-way are respectively set forth in Exhibit "A" through "B-6" and "B" to this division and are incorporated herein. The standards may, from time to time, be modified by the town council, by ordinance 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.

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

The certified costs, as determined pursuant to section 13-42 ~~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, pay ~~post a cash bond with~~ the town in accordance with the formula hereinbelow described.

**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~~ 13-47 of this division.

**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.

**SECTION 7.** Chapter 13 is amended by deleting Article III in its entirety:

**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,"<sup>[4]</sup> 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.~~

**SECTION 8. Severability.** If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

**SECTION 9. Conflicting Provisions.** In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code or regulations, the more restrictive shall apply.

**SECTION 10. Inclusion in Code.** It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

**SECTION 11. Effective Date.** This Ordinance shall take effect immediately upon passage and adoption.

The foregoing Ordinance 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 Marisa Acquaviva	_____
Council Member Brian Vail	_____
Council Member Steve Rivet	_____
Council Member David Scardino	_____
Council Member Danny White	_____

This ordinance was then declared duly passed and adopted this 15th day of May 2021.

**TOWN OF MALABAR**

By: \_\_\_\_\_  
Mayor Patrick T. Reilly, Council Chair

**ATTEST:**

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

(seal)

Approved for Legal Sufficiency:

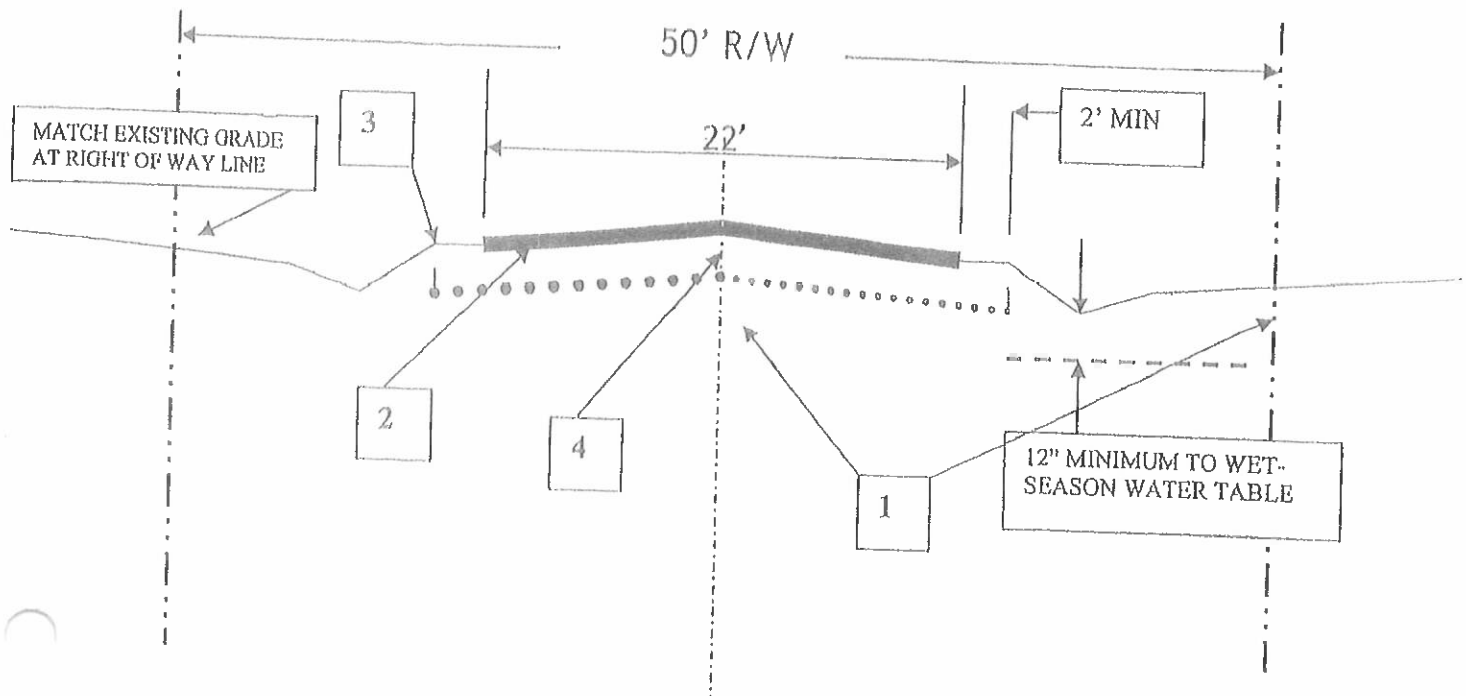
\_\_\_\_\_  
Karl Bohne, Jr, Town Attorney

First Reading: 05/03/2021 Vote to   .

Second Reading: 05/17/2021

## EXHIBIT "B-5" Country Lane

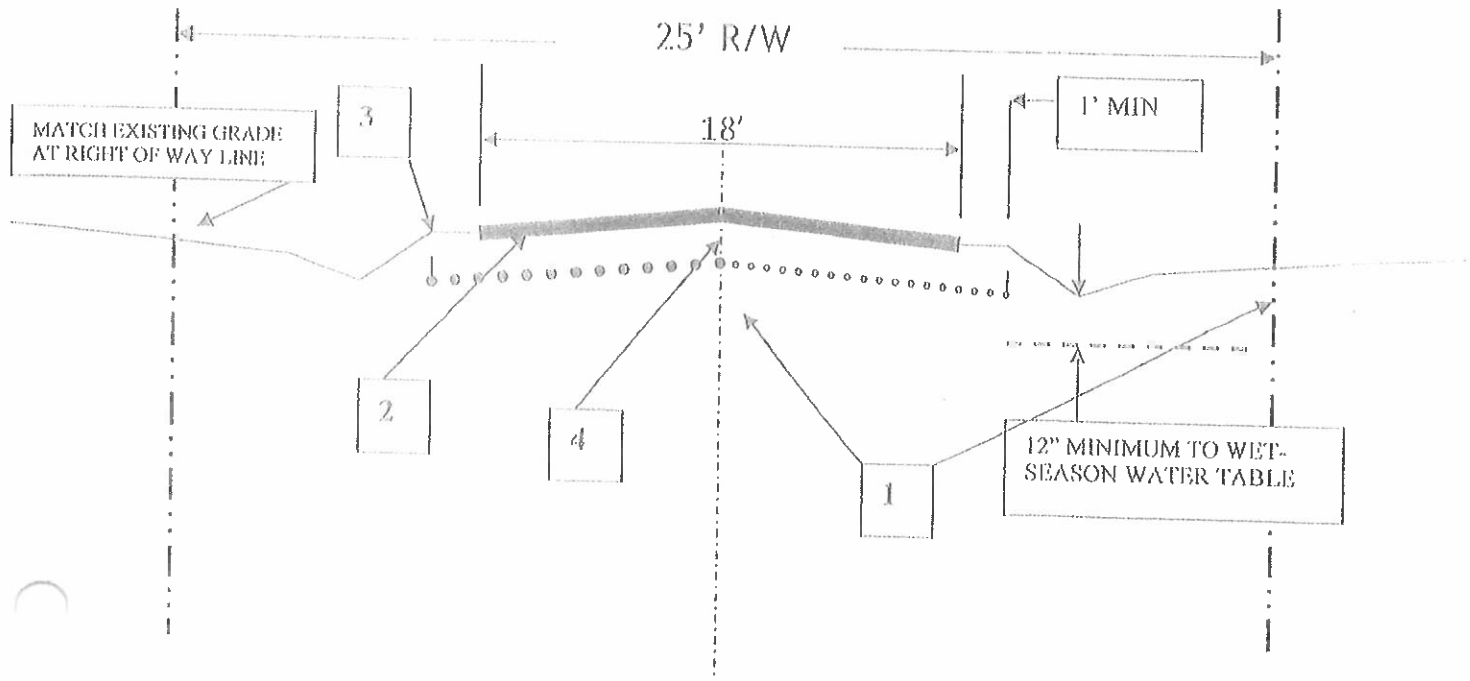
## TYPICAL UNPAVED ROADWAY SECTION FOR 50' WIDE R/W



1. CLEAR & GRUB 50' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES AND DISPOSE OF ALL DEBRIS OFF SITE.
2. STABILIZED & MECHANICALLY MIXED 8" MINIMUM THICKNESS ROAD BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40. USE FDOT APPROVED MATERIALS OR LOCAL MATERIALS APPROVED BY TOWN ENGINEER.
3. STABILIZED SHOULDERS BOTH SIDES AND SOD ADJACENT TO THE TRAVELWAY ON EACH SIDE A MINIMUM 4' WIDE; SOD A MINIMUM OF 2' WIDE IN CENTER OF RIGHT-OF-WAY; SOD SWALE BANKS. SWALE SIDE SLOPES MIN. 3:1. BACKSIDE OF SWALES MAY BE SEED. SOD OR SEED OF THE ENTIRE ROADWAY SHALL BE AS APPROVED BY TOWN ENGINEER.
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT SOILS TO 98% DENSITY PER AASHTO T-180.

## EXHIBIT "B-6" Country Lane

## TYPICAL UNPAVED ROADWAY SECTION FOR 25' WIDE R/W



1. CLEAR & GRUB 50' R/W EXCEPT FOR SPECIMEN TREES TO BE LEFT OUTSIDE SWALES AND DISPOSE OF ALL DEBRIS OFF SITE.
2. STABILIZED & MECHANICALLY MIXED 8" MINIMUM THICKNESS ROAD BASE COMPACTED TO 98% OF MAXIMUM DENSITY PER AASHTO T-180 WITH MINIMUM LBR = 40. USE FDOT APPROVED MATERIALS OR LOCAL MATERIALS APPROVED BY TOWN ENGINEER.
3. STABILIZED SHOULDERS BOTH SIDES AND SOD ADJACENT TO THE TRAVELWAY ON EACH SIDE A MINIMUM 2' WIDE; SOD A MINIMUM OF 2' WIDE IN CENTER OF RIGHT-OF-WAY; SOD SWALE BANKS. SWALE SIDE SLOPES MIN. 3:1. BACKSIDE OF SWALES MAY BE SEEDED. SOD OR SEED OF THE ENTIRE ROADWAY SHALL BE AS APPROVED BY TOWN ENGINEER.
4. SUITABLE SOILS FREE OF ORGANICS. COMPACT SOILS TO 98% DENSITY PER AASHTO T-180.