



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
William K. DeBral, Deputy County Attorney
Susan J. Prado, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners
FROM: Dylan Reingold, County Attorney
DATE: November 23, 2021
SUBJECT: Right of Way Ordinance Amendment

On January 27, 2020, a permit was issued for construction of a single-family residence located at 755 Reef Road. The initial site plan submitted with the single-family residence permit showed a concrete driveway. On February 4, 2021 an as-built survey was submitted for a permit conformance review on which a rock driveway was shown. A field verification inspection was performed and the construction of the driveway was found to be in non-conformance with the approved permit. County staff determined that if the permit application had been submitted with the rock driveway shown, the permit would not have been issued. Section 312.08(2)(A) of the Indian River County Code of Ordinances ("Code") requires "[t]hat portion of any driveway constructed within the county right-of-way shall be constructed as shown in section 312.19 Figures 2 and 3". Figure 2 calls for a concrete driveway and Figure 3 calls for an asphalt driveway.

Based on the language and figures in Chapter 312 of the Code, the Public Works Director rejected the request to allow the non-approved driveway material to remain in the County right-of-way. The decision was appealed to the County Administrator, per section 100.06 of the Code. The County Administrator found that the newly constructed driveway did not comport to the plain language of Section 312.08(2)(A) and Section 312.19 Figures 2 and 3 of the Code and thus upheld the decision. However, the County Administrator did recognize that the driveway construction method is part of the unique character of the surrounding neighborhood and maintains some of the architectural appeal of this community. Thus, although denying the appeal, the County Administrator supported an amendment to Chapter 312 of the Code to allow this type of driveway construction in the right of way under the following circumstances.

- The single family lot had a previous residence with a loose pebble driveway. The new driveway is constructed in a manner similar in character to the original driveway.
- Numerous other homes in the same development have loose pebble driveways, which contributes to the unique architectural characteristics of the neighborhood.
- The driveway is constructed in a County right-of-way that is located on a low traffic, low speed (30 MPH or less), local roadway as opposed to a higher speed arterial or collector roadway.

- The driveway includes a 12-inch concrete ribbon curb apron to provide limited edge protection for the asphalt roadway.

Thus, the County Attorney recommends that the Indian River County Board of County Commissioners authorize the County Attorney's Office to draft an ordinance that creates an exception from the requirements of Chapter 312 of the Code for driveway construction in these situations and other appropriate situations County-wide.

FUNDING.

The only costs for this matter would be the advertising costs for the public hearings.

RECOMMENDATION.

The County Attorney recommends that the Indian River County Board of County Commissioners authorize the County Attorney's Office to draft an ordinance that allows for an exception from the requirements of Chapter 312 of the Code for driveway construction in appropriate situations County-wide and schedule such ordinance for public hearing. The County Attorney's Office also recommends that the Board invoke the pending ordinance doctrine.