



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

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MEMORANDUM

TO: Board of County Commissioners
FROM: Dylan Reingold, County Attorney
DATE: April 22, 2022
SUBJECT: Calcutta Drive Docks

BACKGROUND.

Calcutta Drive is a County road that runs parallel with a canal and the riparian rights to the canal are purportedly the County's. On May 6, 1985, the then County Attorney Gary M. Brandenburg wrote a memorandum to Art Challacombe, an Environmental Planner stating "that the canals and bulkhead system were placed within the subdivision for the benefit of all of the property owners in the subdivision." He went on to explain that "[a]s a result, the County has adopted the policy in the past of allowing individuals to build docks along the County road within the appropriate setbacks, provided they enter into an agreement to hold the County harmless for any and all damage to the bulkhead system of road." He added that "[t]his permitting has been done on a first-come, first-served basis, exclusively for property owners in Country Club Pointe."

On February 5, 1991, the County staff presented an agenda item to the Indian River County Board of County Commissioners (the "Board") concerning license agreements for these docks. In a memorandum from Roland M. DeBlois, Chief, Environmental Planning, dated January 30, 1991, Mr. DeBlois explained the history of the docks being constructed on a first-come, first served basis, provided that the applicant signed the appropriate waiver. Mr. DeBlois also noted that the approvals have been handled administratively. Mr. DeBlois then went on to explain that in consultation with the County Attorney's Office, that the County should look to entering into license agreements with a new applicant, instead of simply relying on the hold harmless waiver. After some discussion on the provisions of the license agreement, the Board approved the license agreement for \$100 per year, subject to the changes requested by the Board. It is important to note that the license agreement included a provision that if the property is sold, that the buyer could execute a similar license within 90 days, and that if the buyer failed to do so, the dock would become the property of the County.

On May 26, 1998, the Board passed Resolution 1998-58, in which the Board delegated the authority to the Community Development Director to execute license agreements pertaining to transferring property utilizing County riparian land for docks within the Country Club Pointe Subdivision. This allowed for a smooth transition for those property owners selling homes that had license agreements.

The license agreements are recorded in the public records and each agreement contains the legal description of the dock/space location as well as the single-family residence that is associated with the dock. If the single-family residence is rented, the tenant is allowed to use the dock and the covenants in the license agreement are to be preserved in the lease. Additionally, no homeowner is allowed to rent the dock/space to third parties; and when the residence sells, the new owner has 90 days from the date of purchase to enter into a similar license agreement or the dock/space and any improvements revert back to the County and made available to the next qualifying person on the waiting list.

Presently there are 20 docks/spaces along Calcutta Drive, and there are three different scenarios that presently exist with regard to these docks: grandfathered; indemnity certificate; and license agreement.

Grandfathered: There are only 2 remaining docks that are grandfathered. No liability insurance is required, and no fees are collected with Grandfathered docks. When the property transfers, the County policy has been to have the new owners enter into a license agreement, thus we then have liability insurance, annual fees paid, and a much better public record of the dock and its association with the residence.

Indemnity Certificate: There is 1 dock that has an indemnification certificate on file (and when the property transfers, the County policy has been to have the new owners enter into a license agreement). Nothing presently is required, except we have the owner's assurance that the County is indemnified.

License Agreement: There are 17 docks with license agreements. Docks/spaces under license agreement are required to annually submit the following items:

1. \$300,000 liability insurance naming the County as an additional insured (if a dock has been constructed)
2. \$100.00 annual license fee plus the applicable sales tax

There is a long waiting list of residents within the Country Club Pointe subdivision who desire a dock and who do not have their own riparian rights to canal frontage. The monitoring of these docks has proven to be a very time-consuming process and staff is constantly being challenged by several issues from the residents not timely paying, not having the proper insurance, not pulling permits when they repair their docks, disgruntled subdivision residents who complain about docks in disrepair in an attempt to obtain a dock for themselves; realtors who inquire about the docks; title companies and closing agents not giving timely notice of a scheduled closing.

There has been strife in the Country Club Pointe subdivision about the policy of allowing the license agreements to transfer to the new purchaser of a home associated with a dock instead of having the dock go to the next person on the waiting list. Although a new transfer policy would open up opportunities to more residents within the Country Club Pointe subdivision, current property owners with docks may be upset, and potential have legal claims against the County, that they will no longer have the ability to make such transfers.

The County Attorney's Office does not recommend that the Board change the 30 plus year old transfer policy. However, the County Attorney's Office recommends that the Board increase the annual license fee from \$100 to \$2,000 per year, for any new license agreements. Additionally, the County Attorney's Office recommends implementing a one-time dock license transfer fee of \$5,000. The County Attorney's Office and County staff diverts significant time to addressing the various issues pertaining to these docks. With these increased fees, the County Attorney's Office believes that the County could support additional resources to monitoring the payment of fees, submission of insurance, transfer of license agreements and maintenance of the docks. It is believed that a more rigorous program would also assist in opening up more opportunities to others in the Country Club Pointe subdivision.

Additionally, the Public Works Department has requested that the license agreements be updated as follows:

- If a dock falls into disrepair and is not fixed within the applicable time period, the County has the right to remove the dock and lien the property for the costs associated with such removal.
- Licensees be required to have the docks inspected on a five-year cycle by an independent third-party expert and submit that report to the County.
- Termination of license for unpermitted work on the dock, for work that would require a permit.

FUNDING

Revenues collected for dock license agreements are deposited into account 001038-362010 - General Fund/Rents & Royalties.

RECOMMENDATION.

The County Attorney's Office recommends that that the Board increase the annual license fee from \$100 to \$2,000 per year, for any new license agreements. Additionally, the County Attorney's Office recommends implementing a one-time dock license transfer fee of \$5,000. The County Attorney's Office further recommends that the license agreements be updated to include provisions relating to the removal of the docks, five-year inspections, and termination for unpermitted work.

ATTACHMENT.

Aerial of docks
Sample of Current License Agreement