



Office of the
**INDIAN RIVER COUNTY
ADMINISTRATOR**

Jason E. Brown, County Administrator
Michael C. Zito, Assistant County Administrator

MEMORANDUM

TO: Members of the Board of County Commissioners

FROM: Jason E. Brown
County Administrator

DATE: March 29, 2017

SUBJECT: Public Beach Access from the 5.38 Acre Parcel owned by the Town of Indian River Shores

Background & Analysis

On February 14, 2017, the Board of County Commissioners directed staff to work with the Town of Indian River Shores (Town) regarding design options for coordinating public beach access from the 5.38 acre parcel owned by the Town through the County owned Tracking Station Oceanfront Park. Since then, staff has met and discussed the various options to provide this access.

The Town intends to offer the property for sale at auction in one of two configuration options. The property will be offered first as three (3) separate single family home-site parcels. Then, the property will be offered as one parcel, zoned for multi-family development. The property would be sold to the bidder(s) offering the highest combined price. If the property is sold as one parcel, the Town has requested that the County provide permission for the future owner to build one (1) dune crossover. However, if the property is sold as three (3) separate single family home-sites, the Town has asked the County to provide permission for the future owner(s) to construct up to, but no more than, three (3) dune crossovers, one to serve each parcel. Please see attached conceptual plans showing the potential dune crossovers for each option.

On March 9, 2017, the Town Council of Indian River Shores held a Special Called meeting to discuss the sale of the 5.38 acre parcel. One of the items discussed was whether to provide a 5'

right of way along the south side of the property from A1A to the Tracking Station Oceanfront Park for public access. The Town Council had taken prior action to provide the 5' right of way. During the meeting, a motion was made to rescind the prior action allowing a 5' right of way. This motion failed 3-2. Therefore, the previous determination to have a 5' pathway still stands. The proposed right of way is depicted on the conceptual plans for the dune crossovers.

Staff recommends that the approval of any dune crossovers be contingent upon the provision of public access from A1A to Tracking Station through the 5' pathway. The County Attorney recommends that the right of way/easement contain a deed restriction that would require County approval as well as Town approval to abandon the right of way/easement or make any changes to any deed restrictions in the future. Staff also has concerns about the width of the proposed 5' pathway. It should be noted that the existing fence is 2' north of the property line. As a result, the 5' pathway is essentially divided near its halfway point. County staff would recommend that either the Town or the buyer relocate the fence closer to the south property line prior to development of the property. Additionally, staff is concerned that the proposed pathway is too narrow. Given that the pathway would be ~ 600 feet long, and the future property owner may install fencing or a wall, a 5' wide pathway seems very narrow and uninviting. Therefore, staff would recommend a 7' wide pathway.

Additionally, the property owner(s) will need to enter into a license agreement with the County for each cross-over structure and associated trimming and access items. This must be a non-exclusive access agreement with the County, and the agreement should address public access rights, liability, penalties for non-compliance, maintenance, replacement, and insurance.

Another matter that should be considered by the Board is provision of public access from the existing north gate at the Tracking Station Oceanfront Park (as shown on map attached) to any future dune crossover(s). Staff recommends that the County require future owners to provide a clear access path from the north gate to future dune crossovers as they are constructed, subject to county staff review and approval.

The Town also requested that the County authorize the Town to trim invasive vegetation as well as to trim a 20'-30' wide swath of "native vegetation (sea-grape trees trimmed no more than to 6" in height without a DEP permit) from the Town property east to the dune to provide potential buyers an opportunity to view the ocean-view...". Furthermore, the Town requested that the County provide permission for future owners to trim/maintain the sea grapes and other native vegetation in a similar manner, within DEP guidelines (please see copy attached). Currently the sea grapes in the area are quite tall in some places, and staff would not support allowing for such trimming due to the potential for over-trimming of mature sea grapes, the loss of sea turtle lighting buffer, and the loss of a visual buffer for park users. Therefore, the Town has rescinded this request and submitted a revised request asking for up to three (3) dune crossovers only (see attachment, dated March 15, 2017).

Staff Recommendation

Staff recommends that the Board of County Commissioners approve the following regarding public access from the Town property through the Tracking Station Oceanfront Park:

1. Provide permission for the future owner(s) to construct only one (1) dune crossover, to serve all parcels, as permitted by the County and any other appropriate permitting agencies including, but not limited to, county dune permit, jurisdictional building permit, and Florida Department of Environmental Protection approval. The property owner(s) will need to enter into a license agreement with the County for the dune cross-over structure. This must be a non-exclusive access agreement addressing public access rights, liability, penalties for non-compliance, maintenance, replacement, and insurance.
2. Item 1 is contingent upon the Town providing a 7' non-exclusive public access easement from A1A to the Tracking Station Oceanfront Park along the south side of the property. This public access easement must contain a deed restriction that would require approval of the County as well as the Town for any future changes or abandonment. The existing fence is to be moved to edge of this easement.
3. Item 1 requires future owner(s) to provide nonexclusive public access from the existing north gate to the dune crossover.

Attachments

Original Request from the Town of Indian River Shores
Revised Request from the Town, dated March 15, 2017
Conceptual Plan showing one (1) dune crossover
Conceptual Plan showing three (3) dune crossovers
Map of Tracking Station showing existing north gate