

20-104 Right Of Way Improvement

(a) **Title.** This division shall be known as the Grant-Valkaria Right-of-Way Improvement Code.

(b) **Definitions.** As used herein, the following terms shall have the following meanings:

Applicant shall mean the Owner who submits an unpaved road request to the Town.

Benefited Owner shall mean a Parcel Owner who has benefited from the construction of an Improved Road abutting said Owner's Parcel and who will be traversing the Improved Road for ingress and egress to their Parcel.

Costs shall mean all expenses reasonably necessary to develop and construct an Improved Road, including, without limitation and as applicable, fees and costs for: environmental analyses and consultants, surveyors, civil engineer(s), wetlands mitigation, the unpaved road application, Town review and administration, Department of Environmental Protection application and permit, St. Johns River Water Management District application and permit, Army Corps of Engineers, Road construction, Florida Power & Light, and Road signage.

Driveway permit shall mean any permit for the construction of a driveway on any property located within the town.

Improved Road shall mean the right-of-way upon which vehicular traffic is intended to travel for the purpose of providing ingress and egress by motor vehicles or other method onto real property and which has been altered from its natural state in order to permit use as a Road constructed in accordance with the procedures and specifications approved by the Town Council.

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, persons, 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 driveway 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.

Parcel shall mean real property located within the Town that is platted as documented in the official records of the Brevard County Property Appraiser's office.

Permitted structure shall mean any structure for which a permit is required pursuant to applicable codes, regulations or laws, whether it is a principal structure, accessory structure or any combination thereof.

Right-of-Way shall mean the unimproved, publicly-owned land platted for use as a Road.

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.

Town Council shall have the meaning as set forth in Article II of the Charter of the Town of Grant-Valkaria, Brevard County, Florida or such designee as appointed by the Town Council.

Town shall mean the Town of Grant-Valkaria, Brevard County, Florida.

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 resulting in such street, road or right-of-way being included on the official list of "accepted" roads within the town.

(c) Precondition to issuance of driveway permit--Completion of road.

- (1) As a precondition for the issuance for any driveway permit on property that abuts an unimproved right-of-way or unaccepted local street/road within the Town of Grant-Valkaria, Brevard County, Florida, the owner of the property for which such permit is requested shall provide for the improvement of the local street/road from which a person will obtain 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 a distance no sooner than the furthest point of the driveway apron for the approved driveway of the parcel of Record. In those instances when reasonable proof can be shown that a road design has been initiated prior to adoption of this ordinance utilizing Brevard County standard in existence on July 26, 2006 those roads may be built to those standards. Provided, however, that such person shall agree in writing to authorize the re-filling of any drainage swale constructed as part of the completion of the cul-de-sac as provided for in this subsection.

After the adoption of this Ordinance no driveway shall be constructed within a cul-de-sac and the cul-de-sac shall be designed to be constructed no sooner than the furthest point of the driveway apron for the approved driveway of the parcel of Record.

Where a cul-de-sac has been constructed and a property owner subsequently applies for a driveway permit for property located on or after the cul-de-sac such property owner shall agree in writing to construct the road in the approved right of way and re-fill, re-grade and sod that portion of the drainage swale constructed as part of the cul-de-sac at such property owner's expense. Additionally, during the drainage swale re-filling activities the applicant for the driveway permit shall provide continuous unobstructed access to those properties abutting the cul-de-sac that are subject to having the drainage swale re-filled.

In determining whether any Parcel "abuts" such unimproved Right-of-Way for purposes of this ordinance, any Parcel that lies contiguous to an existing unimproved local road or Right-of-Way and which is intended to be used as ingress and egress to said Parcel, shall be deemed to abut the unimproved Right-of-Way.

(2) Ownership of contiguous parcels.

- a. In the event that such owner owns more than one (1) parcel of record on the same local street/road and if such parcels are contiguous, such local street/road shall be completed with the installation of a cul-de-sac and the cul-de-sac shall start no sooner than the furthest point of the driveway of the parcel of Record.

(3) Authorized variances.

- a. The Zoning Board of Appeals may only grant a variance to the requirements of subsection (2) (a). Notwithstanding the authority granted to the Zoning Board of Appeals in any other section of the Town of Grant-Valkaria Code the below stated procedures shall in all respects be utilized for a variance to subsection (2) (a). In

order to authorize a variance under this section the Zoning Board of Appeals shall find the following:

- b. That special conditions and circumstances exist and that the presence of which would make complying with section c (2) (a) unreasonable;
- c. The special conditions and circumstances are not caused in any way by the owner or applicant;
- d. That such variances will not be injurious or detrimental to the public welfare;
- e. That the variance granted is the minimum variance that will make possible the reasonable use of the land;
- f. The Zoning Board of Appeals may impose additional reasonable conditions and safeguards that it deems appropriate;
- g. The Zoning Board of Appeals may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.

(d) **Precondition to issuance of driveway permit--Dedication of sufficient right-of-way.** As a precondition for the issuance of any driveway permit on property that abuts an unimproved right-of-way or unaccepted road within the Town of Grant-Valkaria, Brevard County, Florida, the owner of the property for which such permit is requested shall agree to dedicate that portion of his property which abuts said right-of-way or unaccepted road such that the town can achieve its goal of acquiring 50 foot rights-of-way, except that the dedication of right-of-way requirements shall not apply to either arterial roadways such as U.S. Highway 1, and Babcock Street (SR 507); major collector streets such as Valkaria Road and Grant Road; minor collector streets such as Weber Road, Corey Road, Old Dixie Highway; and local streets where a fifty (50) foot right-of-way exists.

Only landowners whose property abuts a right-of-way which is less than 50 feet wide shall be required to dedicate additional property as a right-of-way. In no event shall the issuance of the road permit be inconsistent with the permitted structure's use. The decision of whether to approve such a roadway is within the sole discretion of the Town Council.

Once the landowner receives the Town Council's approval and dedicates the right-of-way required by this division, the landowner may construct the roadway along the existing right-of-way or unaccepted road.

The amount of additional right-of-way to be dedicated by the owner is dependent on the location and width of the existing right-of-way or unaccepted road. If twelve and one-half (12 1/2) feet of the existing twenty-five (25) foot right-of-way or unaccepted road is located on each side of the section line or property line, then the property owner shall dedicate an additional twelve and one-half (12 1/2) feet of right-of-way, such that the dedication will result in twenty five (25) feet of right-of-way on his side of the section line or property line.

If the dedication of the unimproved right-of-way or unaccepted road resulted in all of the existing twenty-five (25) foot right-of-way or unaccepted road being dedicated from property located on the owner's side of the section line or property line, then the owner will not be required to dedicate additional right-of-way.

If the owner on the opposite side of the section line ever decides to use the road for ingress and egress for his residential property, he shall dedicate an additional twenty five (25) feet of right-of-way so that the town can achieve its goal of obtaining a fifty (50) feet of right-of-way.

If the right-of-way dedication or building of the unaccepted road resulted in an unequal distribution of land on each side of section line or property line, then landowners on each side of the section line shall dedicate that portion of their property which would result in twenty five (25) feet of right-of-way on each side of the section line or property line; otherwise a driveway permit will not be issued.

All landowners whose property abuts the twenty-five (25) foot right-of-way which is being or is improved pursuant to the provisions of this division shall comply with the dedication provisions aforementioned. No driveway permits shall be issued unless the landowner dedicates the required right-of-way.

- (e) **Cost of improvement (bond).** Each owner who submits for a request for the construction of a road, shall complete an application requesting for a road to be constructed, in the form approved by the Town Council and shall execute a written agreement with the Town of Grant-Valkaria, Brevard County, Florida, in a form approved by the Town Council, to request for the Town 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 applicant and, prior to the design and bid process of such road, the applicant shall post a cash or cost of improvement surety bond with the town. The applicant shall submit the estimated cost of \$25,000.00 for road design and bid process to be completed by the town. This cost will include design, survey, environmental study, outside agency permits and public bid. In any case where there is overpayment or underpayment for the road design and bid process; the applicant will need to pay the additional cost before it goes out to bid. If underpaid, any overpayment will be reimbursed to the applicant. The amount of the bond for the road construction by the Town will be set after receiving public bids to the Town 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. The procedure shall be adopted by resolution and may be amended by resolution of the Town Council from time to time, as needed. The decision of the Town Council concerning the amount of the bond shall be final.

The applicant shall have ninety (90) days from the date the bond is set to post said bond. Failure to post a bond within ninety (90) days shall result in cancelation of the application submitted requesting the town to construct a road.

- (f) **Road request application and fee.** In order to request a road to be constructed, an applicant shall complete a request for road application. The application for a road to be constructed shall be in a form approved by the town and shall include the following:

- (1) A proof of ownership of the property to where you want the road built. a sufficient location of the property 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 construction request application, 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 construction request application is filed with the Town and the applicable application fee is paid.

Upon receipt of a completed application and fee, the Town shall forward the application package to the town engineer. The town engineer shall design the proposed road meeting town specifications and make it ready for the bid process. The Town will determine after bids are received as to the appropriate bond that shall be required from the applicant as set forth in this division.

- (g) **Improvement process.**

- (1) Any person desiring to improve a public right-of-way shall:

- a. Submit a completed application with required paperwork and cash or bond amount of \$25,000.00. The Town Engineer will design and submit all information to allow the town to bid the right of way improvement. At the next regularly scheduled meeting of the Town Council, after receipt of bid specifications, the Town Council shall direct the town administrator to offer for public bid the improvements as specified. The bidding process shall be conducted in strict compliance with the laws of the State of Florida.
- b. The person posts a cash or surety bond with the Town to have the town construct the he roadway to current Town of Grant-Valkaria standards in accordance with the design.
- c. At the next regularly scheduled meeting of the Town Council, after receiving the bids, the Town Council shall award the bid in strict compliance with the laws of the State of Florida.

The town engineer shall within ten (10) working days of receipt of an inspection request, inspect the roadway construction progress and shall authorize progress payment to the contractor, based on a progress payment schedule submitted by the contractor after the town engineer is satisfied that the work complies with the town standards, and the design.

- (h) **Final report of improvements.** Upon notice of completion of road improvements, the town engineer shall provide to the Town Council a final report, in writing, certifying that the improvements have been completed in accordance with the established standards of the town.

No improvement shall be accepted by the town until a final report, certifying that the improvements meet the established standards of the town, has been provided to the Town Council and approved.

- (i) **Cost certification of improvement.** At the conclusion of the construction of the road improvement, the Town Council shall certify to the town clerk the total costs expended for design, construction and administrative expenses for the road project. All records reasonably required by the Town Council to establish the costs expended for the road project shall be furnished to the property owner upon request. The Town Council shall certify the costs of such road improvements and enter into the minutes of the Town Council the actual costs of such improvements as determined by the Town Council. In no event shall the Town Council certify costs that are excessive or unreasonable.

Once the certified costs have been finally determined as set forth herein, such costs shall be entered on the minutes of the Town Council meeting and a certificate attesting thereto shall be prepared and executed by the mayor of the town and delivered to the town clerk, who shall record such amount in the official records of the town. The certificate shall contain the name of the owner(s), a legal description of the property or properties, for which the driveway permit(s) is/are to be used, and a legal description of the improved street, the street address(es) of the property or properties and the certified costs of performing the improvement.

- (j) **Return of unused portion of bond.** Within ninety (90) days of completion of the road improvement and certification of costs being made, the Town Council shall return any unused balance of the cash bond previously deposited to the party who posted the bond, or their assignees.
- (k) **Standards for road improvements.** The standards for the contractors to complete road improvements of rights-of-way are not spelled out herein and are on file with the Town and available for inspection. The standards may, from time to time, be modified by the Town Council,

by resolution, provided that no such modification shall affect any owner who has filed an application for a driveway permit prior to the effective date of any such change in the standards.

- (l) **Reimbursement for expenses incurred by owner in connection with the construction of road improvement.** The certified costs, as determined pursuant to subsections (h) and (i) hereinabove, shall be reimbursed to the owner of the property expending such monies to complete the improvement, or their assignees (provided such assignment is recorded as herein below described), by monies obtained from property owners who subsequently apply for driveway 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 and in accordance with the terms and conditions of this division. Nothing herein shall obligate the Town to collect any reimbursement monies from any property owner who subsequently applies for a driveway permit on property adjacent to or abutting any street that has been improved and accepted by the Town in excess of 15 years from the date the Town accepts the road.

The method of reimbursement shall be as follows: In order for any property owner to obtain a driveway 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 shall, at the time of application for the driveway permit, post a cash bond with the town in accordance with the formula herein below described. There shall be no piggy backing of reimbursement agreements in the event there are multiple extensions of the same roadway. The property owner will only pay reimbursement to the builder of the roadway section they are tying into.

An owner who wants a driveway permit for a parcel of property that abuts an improved street or section thereof, that had been previously completely improved pursuant to this division, shall pay an amount equal to their pro rata share of the total certified costs of the completed Standard Road based upon a formula whereby the total certified costs of the improved sections of the Standard Road are multiplied by a fraction, the numerator of which shall be the total number of lots owned by a person for which a driveway permit is applied for, and the denominator of which shall be the total number of lots that can utilize the Standard Road determined at the time the original road is constructed by the Town. In the event additional properties are determined eligible to utilize the road then the formula shall be adjusted accordingly to reflect the new lots and refunds, less town administrative costs, shall be made to all persons who have previously paid their pro-rata share to the Town.

If the bid as required by section 2.6 (3) reveals that there are Extra Costs the reimbursement breakdown shall be adjusted so that the Extra Costs will be reimbursed by the owners of property, between the area described in the bid where the Extra Costs will occur and the property for which the bid has been provided, subsequently requesting a driveway permit based on a formula whereby the certified Extra Costs are multiplied by a fraction, the numerator of which shall be the total number lots owned by a person subsequently applying for a driveway permit between the area described in the bid where the Extra Costs will occur, and the denominator of which shall be the total number of lots that can utilize that portion of the improved road where the Extra Costs will occur. Such extra costs shall be limited to wetland mitigation or similar circumstances. Extra costs do not include extra clearing, extra muck removal, extra fill, or other similar elements.

These monies shall be paid to the town as a precondition for issuance of a driveway permit.

The monies received by the town from such owner shall be disbursed to the owner of the property that originally requested the road to be constructed and posting the monies, or assigns of record, who expended the certified costs to improve such street, pro rata, based upon the amount by which such reimbursed owners expended funds in excess of what would have been

their pro rata share of the total improvement as determined by the same manner described hereinabove, less an amount equal to fifty dollars (\$50.00) or one (1) percent of the monies received from the owner making such reimbursement, whichever is greater, which monies shall be retained by the town to cover its administrative costs. Such monies shall be disbursed to such person within thirty (30) days after acceptance of the road.

- (m) **Improvement of unaccepted portion of partially improved road.** When an owner wishes to obtain a driveway 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 to request the Town to construct the improved street. Said owner shall be entitled to reimbursement for his expenses as set forth in this division.
- (n) **Improvement required if land partially abuts unaccepted road.** If an owner wishes to obtain a driveway permit for a property that abuts a street that has been improved pursuant to the terms of this division, after the effective date of this division, such owner shall request the town to construct the road pursuant to the terms of this division. Said owner shall be entitled to reimbursement for his expenses as set forth in this division.
- (o) **Reimbursement record.** All monies to be reimbursed to owners who have previously expended certified costs pursuant to this division shall be returned to such owners of the properties as listed at the Brevard County Property Appraisers. If the Town is unable to deliver the reimbursement monies to the person who owns the property the Town shall attempt to locate the whereabouts of said person by searching the real estate property records of Brevard County and the county of the last known address of the said person, the public records of the Clerk of Court of Brevard County and the county of the last known address of the person, the Florida Department of Highway Safety and Motor Vehicles. The Town shall also publish a notice of right to claim property once a week for two consecutive weeks in a newspaper of general circulation in the county of the last known address of the person. If after the expiration of 90 days from the date of the last publication the person, the estate of the person or a court appointed fiduciary of the person does not make a claim to the monies then title to the monies described herein shall vest in the Town. If such person is located or such person makes a timely claim to the monies the Town shall turn over the balance of the monies to such person less any and all expenses incurred by the Town for its location efforts.
- (p) **Assignment.** In the event that any owner desires to assign his rights in the certified costs of road improvements expended by him to any successor in interest to the property of such owner, such owner may file with the town clerk a notice of assignment on a form approved by the town, which notice of assignment shall be recorded by the clerk in the official certified costs records, in which case the clerk shall pay such monies over to the assignee upon reimbursement as set forth hereinabove. Such assignee shall have the same obligation to keep the town clerk informed of any changes of address and the same procedure shall be utilized in the event that reimbursed monies are not deliverable to such assignee, after which time such monies shall be forfeited as described hereinabove.
- (q) **Levy of special assessments for street paving, construction or hard surfacing.** Pursuant to F.S. Ch. 170, the Town Council may, but is not obligated to, from time to time, levy special assessments for paving, hard surfacing, and construction of streets, as well as other purposes permitted by F.S. Ch. 170. The town reserves the right to levy such special assessments from time to time. Furthermore, upon petition signed by the owners of two-thirds (2/3) or greater of the front footage on any street requesting the Town Council to construct, pave, or hard surface any road within the town, the Town Council of the town may, but is not obligated to, upon a finding by the council that the petition is in sufficient form, substance and execution, order such property to be assessed in accordance with F.S. Ch. 170.
- (r) **Remedies.** In addition to other remedies described in this division and those available at common law, which shall be cumulative herewith, the Town Council may proceed against any individual violating this division in law and in equity and may obtain from the court mandatory or

prohibitive preliminary and permanent injunctive relief. In any action related to this division, in which the town is a party, the town, if it prevails, shall be entitled to recover its reasonable attorney's fees and suit costs, including those associated with any appellate or post-judgment proceedings.

- (s) **Prospective application.** This division shall have prospective application only, and no property owner who expended monies for the improvement of any road or right-of-way within the town prior to the effective date of this division shall have any right or entitlement to reimbursement for such expenses by virtue of this division.
- (t) **Exemptions.** The Town hereby exempts all Parcels from this ordinance for which the Benefited Owner of such Parcel has entered into a written road cost-sharing Agreement with the Road Applicant and has paid the appropriate pro-rata share of the Improved Road development costs to the Applicant, as well as all Parcels owned by a governmental entity including, but not limited to, the Town, Brevard County, the St. Johns River Water Management District or the State of Florida so long as such governmental Owners submit an affidavit to the Town that neither they nor their agents shall use the Improved Road to access their Parcel, and further that if such governmentally owned Parcels are subsequently sold to a non-governmental Owner they shall become subject to the provisions of this Ordinance.
- (u) **Road Naming.** The Applicant shall choose the name of the Improved Road, subject to not duplicating any existing Road name within the Town, and subject to approval by Brevard County.