



Office of *County Attorney's Matters 06/07/2022*  
**INDIAN RIVER COUNTY**  
**ATTORNEY**

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

MEMORANDUM

TO: The Board of County Commissioners

THROUGH: Richard B. Szpyrka, P.E., Public Works Director

FROM: William K. DeBraal, Deputy County Attorney

DATE: May 25, 2022

SUBJECT: Acquisition of Right-Of-Way from Venda Burgess for 58<sup>th</sup> Avenue/33<sup>rd</sup> Street Intersection Improvements – 3335 58th Avenue

Venda Burgess (Ms. Burgess) is the owner of a 0.30-acre parcel of property located on the northwest corner of 58<sup>th</sup> Avenue and 33<sup>rd</sup> Street as shown below as *Figure 1*.



*Figure 1. Burgess property aerial photo*

The parcel is zoned RS-3, single family, up to three units per acre and lies inside of the Urban Services Boundary. This property is rectangular in shape with 100 feet of frontage along 58<sup>th</sup> Avenue and is 132 feet deep and lies within the unincorporated County. Preliminary plans show the new right-of-way line going through the southern portion of the house. Rather than facing severance damages and the cost to cure, the County prefers to acquire the entire 0.30-acre parcel from Ms. Burgess for improvements to the 58<sup>th</sup> Avenue/33<sup>rd</sup> Street intersection. The former Dodger Pines Golf Course lies to the east of the Burgess property and is within the city limits of the City of Vero Beach. The golf course closed in 2002 and since that time a number of developments have been proposed to the City with none making it further than the planning

stages. The most recent owner, Sunfield Homes, has proposed a 780-unit development that will have access points off of 43<sup>rd</sup> Avenue north of 26<sup>th</sup> Street, 26<sup>th</sup> Street between 43<sup>rd</sup> and 58<sup>th</sup> Avenues and off of 58<sup>th</sup> Avenue at 33<sup>rd</sup> Street. The 58<sup>th</sup> Avenue/33<sup>rd</sup> Street intersection is scheduled to be expanded with turn lanes and a traffic signal, all to be built at the developer's cost, if the right of way is available. The Burgess property is needed so when the development moves forward to the construction stage, the right-of-way will be purchased and the intersection improved with no obligations running to the County. The Board approved the purchase of the Cherry Lane Estates, Inc. right-of-way parcel at its meeting of May 17, 2022. The Cherry Lane parcel provided needed right-of-way along the south side of 33<sup>rd</sup> Street. Acquisition of the Burgess parcel will complete right-of-way acquisition needed for the 58<sup>th</sup> Avenue/33<sup>rd</sup> Street intersection improvements.

Ms. Burgess purchased this home in 1987 and has lived in the residence for the past 35 years. She retired from the Indian River School District after 30+ years as a guidance counsellor. The improvements located within the area of take consisting of:

- A 3-bedroom, 2-bath wood frame single family home
- Numerous mature oak and palm trees
- A semi-circular concrete driveway with connections to 58<sup>th</sup> Avenue and 33<sup>rd</sup> Street
- Extensive landscaping
- A front porch and a screened rear porch

Please see the sketch and legal description attached to the Agreement to Purchase and Sell Real Estate that is included with this memorandum. The County's appraisal for the Burgess home was performed by Armfield & Wagner. That 2021 appraisal assigned value for the whole take of \$305,000. A copy of the appraisal is available for review at the Board of County Commissioners Office. The appraisal used the comparable sales approach in establishing a value for the land and improvements within the area of take. The comparable sales method is the most common method used in valuating real estate.

Ms. Burgess is represented by Brent Simon, Esq. The appraiser hired by Ms. Burgess established the value of the property as a whole at \$510,000. A copy of this report is available for review at the Board of County Commissioners Office. Through negotiations with Ms. Burgess attorney, the parties agreed to a settlement proposal to the Board of \$552,000 in the full and final settlement of all claims by Ms. Burgess, including all improvements to the property, attorney's fees and expert witness costs. Ms. Burgess will be given no more than one year of extended possession at no cost so she will be able to complete her plan of purchasing a new residence.

By accepting the settlement and purchasing the property in advance of filing a lawsuit, staff is attempting to save on expert witness fees incurred by both the County and Ms. Burgess. As noted in the past, expert witness fees for both parties often exceed \$100,000 by the time the suit is ready for trial, not inclusive of legal fees incurred by Ms. Burgess and the County. Pursuant to state statutes, the County is responsible for reasonable expert witness fees of Ms. Burgess, as well as attorney's fees for her counsel. The County has incurred significant savings by not having to hire our trial attorney and witnesses: appraiser, engineer, landscape architect and land planner.

Since the parties reached the Agreement to Purchase and Sell Real Estate ("Agreement" attached) through negotiations with the attorneys, this Agreement settles the case in full.

**STAFF RECOMMENDATION:** Staff recommends the Board approve the Agreement to Purchase and Sell Real Estate for Ms. Burgess' property and authorize the Chairman to execute the document on behalf of the Board.

**FUNDING:** Funding in the amount of \$552,000 for this acquisition is budgeted and available from Traffic Impact Fees 2020/District 1/58<sup>th</sup> Ave-33<sup>rd</sup> Street Left Turn Lanes, Account # 10415141-066120-15002.

Attachments: Agreement to Purchase and Sell Real Estate with Exhibits

Copy to: Brent Simon, Esq.