



*Office of*

Attorney's Matters 08/16/2022

**INDIAN RIVER COUNTY  
ATTORNEY**

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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:** July 28, 2022

**SUBJECT:** Acquisition of Right-Of-Way for Phase II of 66th Avenue Improvements – Ken Chesnut – 6900 65<sup>th</sup> Street, Parcel 303

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Ken Chesnut is the owner of a 9.8-acre parcel of property on the north side of 65<sup>th</sup> Street west of 66<sup>th</sup> Avenue as depicted on the aerial photo attached to this memorandum as Exhibit "A". The property is zoned A-1, Agricultural, up to one residential unit per five acres and lies outside of the Urban Services Boundary. The site was a former citrus grove but now has been cleared, furrowed and planted with over 200 mango trees and other fruit trees. Improvements include a large barn used for equipment storage and a workshop, fencing, pond and a flow well with a pump.

The County filed a lawsuit in eminent domain against Mr. Chesnut in June, 2021. The County's good faith deposit was made to the registry of the court in the amount of \$29,500.00. This amount was withdrawn by Mr. Chesnut pursuant to an Agreed Order of Take in September, 2021.

Construction plans call for the County to acquire Parcel 303 from Mr. Chesnut:

- Parcel 303 is made up of 0.38 acres (16,500 sq. ft.) of right-of-way consisting of a 50' X 330' wide strip along the entire length of the southern border of the 9.8-acre parcel;
- Six live oak trees ranging in size from 9 to 15 inches in diameter.
- Two gates and approximately 400 linear feet of fencing.

Please see the sketch and legal descriptions of Parcel 303 attached as Exhibit "B" to this memorandum. The County's appraisal for Parcel 303 was performed by Armfield & Wagner. The appraisal assigned values as follows:

Land Value: 0.38 acres @ \$25,000/acre = \$9,500

Value of Improvements: Wood fencing, oak trees, gravel driveway, grassed areas, irrigation = \$20,000

Land value	+	Value of Improvements	=	Total Compensation for Parcel 303
\$9,500	+	\$20,000	=	\$29,500

The appraisal did not find any severance damages. The appraisal did attach a value of \$20,000 respectively, for the oak trees and fencing that runs parallel to 65<sup>th</sup> Street. Re-establishing the two driveways was estimated at a cost of \$8,250.

Mr. Chesnut, accompanied by his attorney Mike Whitt, attended the mediation with Tony Gonzales as the mediator, and County staff consisting of Rich Szpyrka and Bill DeBraul on July 19, 2022. Mr. Chesnut submitted an appraisal seeking \$153,200 in compensation, claiming that he would have to reconfigure the gates, fencing, interior drive isles and parking due to the proposed take. His plan for the property is to have a sustainable farm where fruit (mangos) and other vegetable would be raised. He claims that 21 mango trees would be lost due to the reconfiguration and the cost to cure the effects of the take would be \$58,600. Their assessment of damages would be:

Land value	+	Value of Improvements	+	Cost to Cure	=	Total Compensation for Parcel 303
\$13,500	+	\$81,100	+	\$58,600	=	\$153,200

After a full day of mediation, Staff and Mr. Chesnut agreed on the terms of the Mediation Settlement Agreement that is attached to this memorandum as Exhibit "C". The settlement terms are:

- The County will pay to Mr. Chesnut \$135,000 for right-of-way Parcel 303, which is inclusive of all severance damages, damages to the improvements, cost to cure and reconfigure, attorney's fees and all costs and expert witness fees. The County will receive a credit for the \$29,500 already paid into the court, and the balance payable to Mr. Whitt's trust account will be \$105,500.
- The County will install two 24' wide standard stabilized driveways (not concrete) at their current locations
- The County (or its contractor) will deliver 60 cubic yards of stabilized base and 45 cubic yards of Florida Department of Transportation specified shell or lime rock to locations specified by Mr. Chesnut and he will be responsible for construction of the reconfigured new roads.

By settling the case prior to trial, staff is attempting to save on expert witness fees and attorney's fees incurred by both the County and from Mr. Chesnut. As noted in the past,

expert witness fees for both parties often exceeds \$100,000 by the time the suit is ready for trial. Pursuant to state statutes, the County is responsible for reasonable expert witness fees of Mr. Chesnut. The County will incur significant savings by not having to pay our trial witnesses (appraiser and engineer) and outside counsel for depositions and trial preparation.

**STAFF RECOMMENDATION:** Staff recommends the Board approve the Mediation Settlement Agreement for the Chesnut property and authorize the Chairman to execute the document on behalf of the Board.

**FUNDING:** Funding in the amount of \$105,500 for this acquisition is budgeted and available from Traffic Impact Fee/District I/Row/66<sup>th</sup> Avenue- 69<sup>th</sup> Street-85<sup>th</sup> Street- Acct# 10215141-066120-16009.

Attachments: Exhibit "A" Aerial Photo  
Exhibit "B" Sketch and Legal Description of Parcel 303  
Exhibit "C" Mediation Settlement Agreement

Copies to: Bill Doney, Esq.  
Mike Whitt, Esq.