



Office of

Attorney's Matters 08/13/2019

**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. Szyrka, P.E., Public Works Director

**FROM:** William K. DeBraal, Deputy County Attorney

**DATE:** August 6, 2019

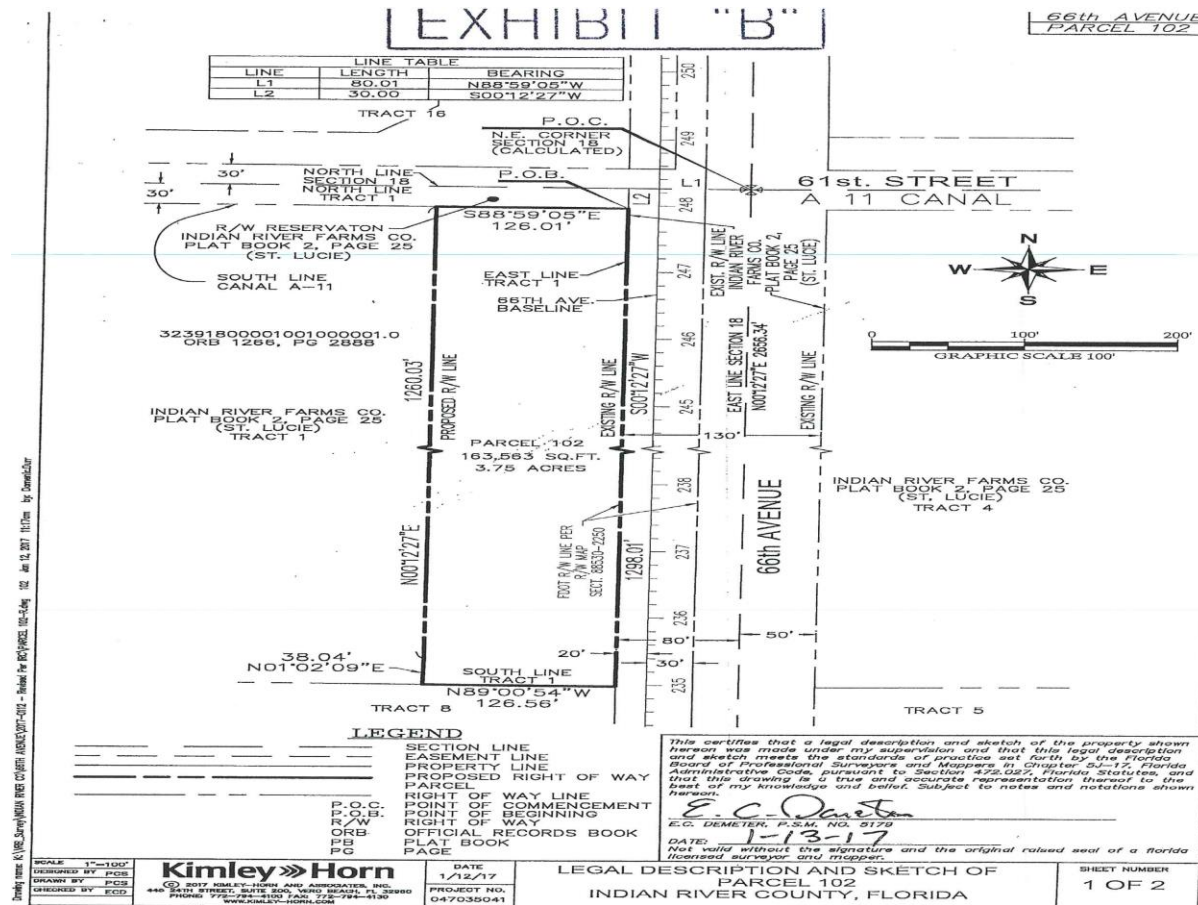
**SUBJECT:** Acquisition of Right-Of-Way Parcel 102 for Phase II of 66th Avenue Improvements from Harris Groves, 61<sup>st</sup> Street and 66<sup>th</sup> Avenue

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Harris Groves, a partnership, owns a 37.85 acre parcel of property located at the southwest corner of 66<sup>th</sup> Avenue and 61<sup>st</sup> Street. This site is rectangular in shape with 1,298.18 feet of frontage along 66<sup>th</sup> Avenue and is 1,143.7 feet deep. The property is located outside the urban service boundary and is zoned A-1 Agricultural, up to one unit per five acres. The parcel contains barbed wire fencing with no structures and is currently used for pasture in the family's cattle business. Harris Groves has owned the property since 1983. An aerial photo of the property is depicted below as Exhibit "A".



In order to accommodate the planned improvements to 66<sup>th</sup> Avenue, the County needs to acquire approximately 3.75 acres from Harris Groves to be used for right-of-way. Site improvements consisting of a barbed wire fence and a flow well for irrigation lie within the area of take. Construction plans for this section of 66<sup>th</sup> Avenue call for the County to acquire a 156' deep strip along the length of the eastern border of the property. A sketch and legal description of the right-of-way are found below in this memo as Exhibit "B". The total property needed is ± 10% of the Parcel, leaving a remainder of 34.10 acres.



66th AVENUE  
PARCEL 102

**LEGAL DESCRIPTION**  
RIGHT-OF-WAY PARCEL

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING A PORTION OF TRACT 1, SECTION 18, TOWNSHIP 32 SOUTH, RANGE 39 EAST ACCORDING TO THE LAST SECTION 18 OF LANDS OF THE INDIAN RIVER FARMS COMPANY AS RECORDED IN PLAT BOOK 2, PAGE 25 OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, NOW LYING AND BEING IN INDIAN RIVER COUNTY, FLORIDA; SAID LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

COMMENCING FOR REFERENCE AT THE NORTHEAST CORNER OF SAID SECTION 18; THENCE BEARING NORTH 88°59'05" WEST, ALONG THE NORTH LINE OF SAID SECTION 18, A DISTANCE OF 80.01 FEET TO A POINT;

THENCE LEAVING SAID NORTH LINE, BEARING SOUTH 00°12'27" WEST, A DISTANCE OF 30.00 FEET TO THE POINT AND PLACE OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

THENCE CONTINUE SOUTH 00°12'27" WEST ALONG THE EAST LINE OF SAID TRACT 1, A DISTANCE OF 1,298.01 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT 1;

THENCE LEAVING SAID EAST LINE, BEARING NORTH 89°00'54" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 128.56 FEET TO A POINT;

THENCE LEAVING SAID SOUTH LINE, BEARING NORTH 01°02'09" EAST, A DISTANCE OF 58.04 FEET TO A POINT;

THENCE BEARING NORTH 00°12'27" EAST, A DISTANCE OF 1,280.03 FEET TO A POINT ON THE SOUTH LINE OF CANAL A '11;

THENCE BEARING SOUTH 88°59'05" EAST, ALONG SAID SOUTH LINE, A DISTANCE OF 128.01 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PREMISES CONTAIN AN AREA OF 183,863 SQUARE FEET OR 4.25 ACRES, MORE OR LESS, SUBJECT TO ALL EASEMENTS, CONDITIONS AND RESTRICTIONS AS CONTAINED WITHIN THE CHAIN OF TITLE.

**SURVEYORS NOTES**

- 1) THIS IS A SKETCH OF LEGAL DESCRIPTION ONLY, NOT A BOUNDARY RETRACEMENT SURVEY.
- 2) THE BEARING BASE FOR THIS SURVEY, IS THE EAST LINE OF SECTION 18. SAID LINE BEARS NORTH 00°12'27" EAST.
- 3) THE SCALE OF THIS DRAWING MAY HAVE BEEN DISTORTED DURING REPRODUCTION PROCESSES.
- 4) THIS LEGAL DESCRIPTION AND SKETCH IS BASED ON THE PRELIMINARY RIGHT OF WAY MAP FOR 66TH AVENUE PREPARED BY BURDETTE AND ASSOCIATES, DATED 10-10-08, AS DIRECTED BY INDIAN RIVER COUNTY, FLORIDA.

Drawing made by: Kimley-Horn and Associates, Inc. (KHA) on 10/13/2017 11:58am by: James L. Horn

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|--|--|---|---|------------------------|
| BOOK<br>DESIGNED BY: PDS<br>DRAWN BY: PDS<br>CHECKED BY: EOB | <b>Kimley-Horn</b><br>2017 KIMLEY-HORN AND ASSOCIATES, INC.<br>440 SOUTH BRIDGESIDE, SUITE 200, WEST BRIDGE, FL 32909<br>PHONE: 772-794-4100 WWW.KIMLEY-HORN.COM | DATE<br>1/12/17<br>PROJECT NO.<br>047035041 | LEGAL DESCRIPTION AND SKETCH OF<br>PARCEL 102<br>INDIAN RIVER COUNTY, FLORIDA | SHEET NUMBER<br>2 OF 2 |
|--|--|---|---|------------------------|

A recent appraisal establishes the value of the partial taking at \$85,100. In a letter dated May 31, 2017, the County offered Harris Groves \$86,250 for the 3.75 acres making up Parcel 102. The offer was based on a value of \$23,000 per acre. No severance damages were assessed with the most recent appraisal. Due to the size of the parent parcel, staff did not make an offer on the entire parcel.

However, back in 2008, the Board extended an unconditional offer on the Harris Groves parcel in the sum of \$148,350. That offer consisted of the value of the land taken of \$114,000 (\$30,367.61 per acre) with severance damages in the amount of \$15,000 plus a 15% bonus in order to defray possible attorney's fees bringing the unconditional offer to \$148,350. Severance damages were deemed to apply as the take will result in a 10% reduction to the size of the property.

A pre-suit mediation conference was held on July 11, 2019, with Harris Groves. The partnership consists of Mr. and Mrs. Harris and their sons Billy and Marlon. Also in attendance were the attorney for Harris Groves David Holloway, Public Works Director Rich Szyrka, and the Deputy County Attorney. Attorney Randy Brennan was the mediator.

The County's initial appraisal of the Parcel was performed by Armfield & Wagner and they assigned a value of \$85,100 for the 3.75 acres of right-of-way. The appraiser retained by Harris Groves valued the Parcel at \$646,000 for a partial take.

After further discussion, the parties reached an agreement under the following terms:

1. Harris Groves would convey the 3.75 acre right-of-way parcel (Parcel 102) to the County for the sum of \$218,500. The breakdown of the purchase price would be as follows:  $\$35,250/\text{acre} \times 3.75 \text{ acres} = \$132,190 + \$59,500$  severance damages (5% of the remainder 34 acres) + \$27,000 to remove and replace the 1,298 feet of fence and regrade the dirt road along the entire length of the inside of the fence for a total of \$218,500 (figures were rounded for ease of settlement).
2. The planned left turn median cut will be located so that the centerline of the median cut will correspond with the southern boundary of the Harris Groves property.
3. The County (or its contractor) will construct a 14' wide driveway at 66<sup>th</sup> Avenue expanding to 36' at the southern-most border of the remainder of Parcel 102.
4. The County has no objection to Harris Groves installing a code compliant culvert for access to the remainder property from 61<sup>st</sup> Street, subject to approval of all other jurisdictions.
5. Within 30 days after closing, the County shall stake the new right-of-way line and the location of the 61<sup>st</sup> Street driveway.
6. The County shall pay the sum of \$44,022 in attorney's fees and \$24,230 in costs to Harris Groves.

These construction conditions were approved by the Public Works Director.

By purchasing the property in advance of filing a lawsuit, staff is attempting to save on expert witness fees that would have been incurred by both parties. Pursuant to eminent domain statutes, the County is responsible for paying reasonable expert witness fees incurred by both parties. As noted in the past, expert witness fees for both parties often exceed \$100,000 by the time the suit is filed, depositions of the experts are taken and mediation is held. The County has achieved significant savings in this case by not having to hire our trial witnesses (appraiser, engineer and land planner), outside counsel and compromises on attorney's fees and expert costs.

At the conclusion of the mediation conference, the parties entered into a Pre-Suit Mediation Settlement Agreement which is found below as Exhibit "C".

**FUNDING:** Funding for this acquisition is budgeted and available from Traffic Impact Fees/District II/ROW/66th Ave/49<sup>th</sup> Street -65th Street- Acct #10215241-066120-07806.

**STAFF RECOMMENDATION:** Staff recommends the Board approve the mediation agreement to purchase the 3.75 acre Harris Groves property for \$218,500 with the stated

conditions, approve costs incurred by Harris Groves of \$24,230 and approve the settlement of attorney's fees of \$44,022 and authorize the Chairman to execute the Pre-Suit Mediation Settlement Agreement on behalf of the Board.

Copies to: David Holloway, Esq.

Exhibit "C" Pre-Suit Mediation Settlement Agreement

**INDIAN RIVER COUNTY**

**(hereafter Petitioner)**

**vs.**

**Harris Groves, a partnership  
(PARCEL 102)**

**(hereafter Defendants)**

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**PRE-SUIT MEDIATION SETTLEMENT AGREEMENT**

The above named Petitioner and Defendants have reached the following agreements in full and complete resolution of the above styled pre-suit claim, which arises out of an eminent domain claim by the Petitioner against the property owned by the Respondents and located at on 66<sup>th</sup> Ave, Vero Beach FL 32967, (Hereafter "Parcel 102") the legal description of which is included on exhibit A:

1. Within 20 days of the County Commission approving this Agreement as described herein, the Petitioner agrees to do the following:
  - A. The Petitioner will pay to the Defendant the total sum of \$218,500.00 (Two Hundred Eighteen Thousand Five Hundred Dollars) for Parcel 102; and
  - B. The Petitioner will pay the Defendant \$44,022.00 (Forty Four Thousand Twenty Two Dollars) in attorney's fees, including any non-monetary claims for

fees; and

C. The Petitioner will pay Defendant \$24,230.00 (Twenty Four Thousand Two Hundred Thirty Dollars) in reimbursement for Defendant costs.

2. Within 20 days of the County Commission approving this Agreement as described herein, the Defendant agree to do the following:

a. The Defendant will convey to the Petitioner clear title to the real property described as the "Right of Way Parcel" on Exhibit A. (Parcel 102 containing 3.75 acres or 163,552 square feet +/-)

3. The Petitioner agrees to construct a driveway from 66<sup>th</sup> Ave onto Parcel 102 at a 6% slope (with a 36' width where the driveway connects to 66th Avenue and at least 14' width at the right of way line) during the planned 66<sup>th</sup> Avenue roadway widening project (hereafter the Road Project). Depending on the engineering requirements, the driveway may extend into Parcel 102, in which case Defendant agrees to give Petitioner a temporary construction easement or right of entry to construct the driveway. The driveway will be concrete to the right of way line and will be located at the median cut described below.

4. The Petitioner agrees that a median cut will be installed during the Road Project and that the median cut will be centered on the property boundary between Parcel 102 and the next property to the south. Further, the Petitioner agrees to install a left turn lane at this median cut for northbound 66th Ave traffic.

5. The Petitioner agrees that it has no objection to Respondent installing a

- code compliant culvert and driveway along 61st Street, however the parties agree that such culvert is subject to approval by the water management district with jurisdiction. The Petitioner will provide the driveway curb cut for this driveway as shown on the Petitioners plans.
6. Within 30 days after the closing the Petitioner will stake the new right of way line and the driveway located on 61st street.
  7. This entire Agreement is subject to and contingent upon approval by the Indian River County Board of County Commissioners (Hereafter the Board). The Petitioner will put this Agreement on the agenda for the next available Board meeting and the County Staff will recommend Board approval of this Agreement. If the Board fails to approve this Agreement, then this entire Agreement is void.
  7. Except as stated herein, all parties to this agreement further agree to bear their own costs and fees.
  8. The Petitioner will pay the entire cost of the mediation.
  9. This agreement is final and binding as of the date and time it is signed by or on behalf of the parties.
  10. Other agreements: None

Harris Groves Parcel 102 memo to BCC

August 7, 2019

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Done and agreed to on this 11th day of July, 2019 in Vero Beach, Florida.

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WILLIAM K. DEBRAAL, ESQUIRE  
Indian River County Attorney

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Harris Groves  
Respondent/Representative

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William E. Harris, Sr.

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Shelby Harris

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William E. Harris, Jr.

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Craig Harris

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DAVID W. HOLLOWAY, ESQUIRE  
Attorney for Respondents

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H. RANDAL BRENNAN, MEDIATOR  
Mediator #:15632CR