



Office of

Attorney's Matters 09/15/2020

**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
William K. DeBaal, 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. DeBaal, Deputy County Attorney

DATE: September 9, 2020

SUBJECT: Acquisition of Right-Of-Way Parcel 109 for Phase III of 66th Avenue Improvements from Christine and Billy Jackson, 6805 66th Avenue

Christine and Billy Jackson are the owners of a 1.85 acre parcel of property on the west side of 66th Avenue just south of 69th Street which is depicted on the aerial photo as *Figure 1*.

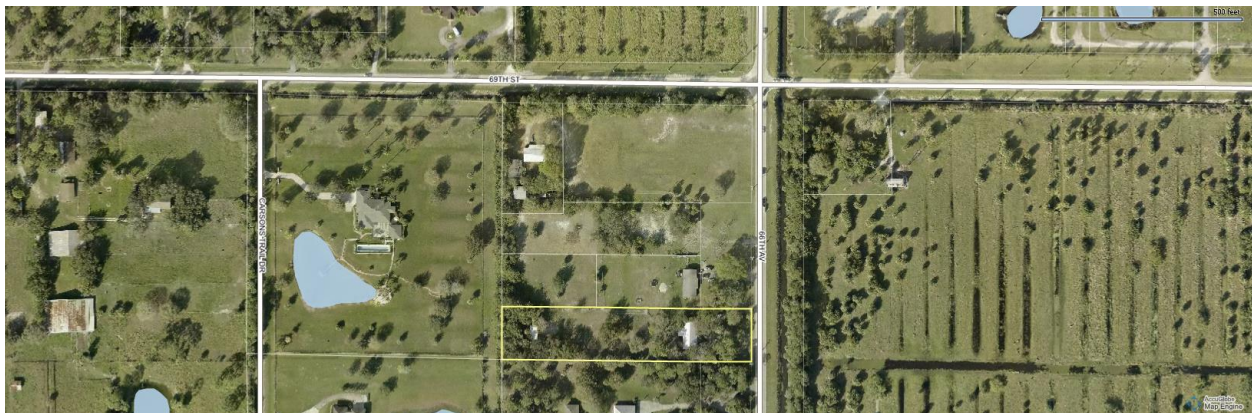
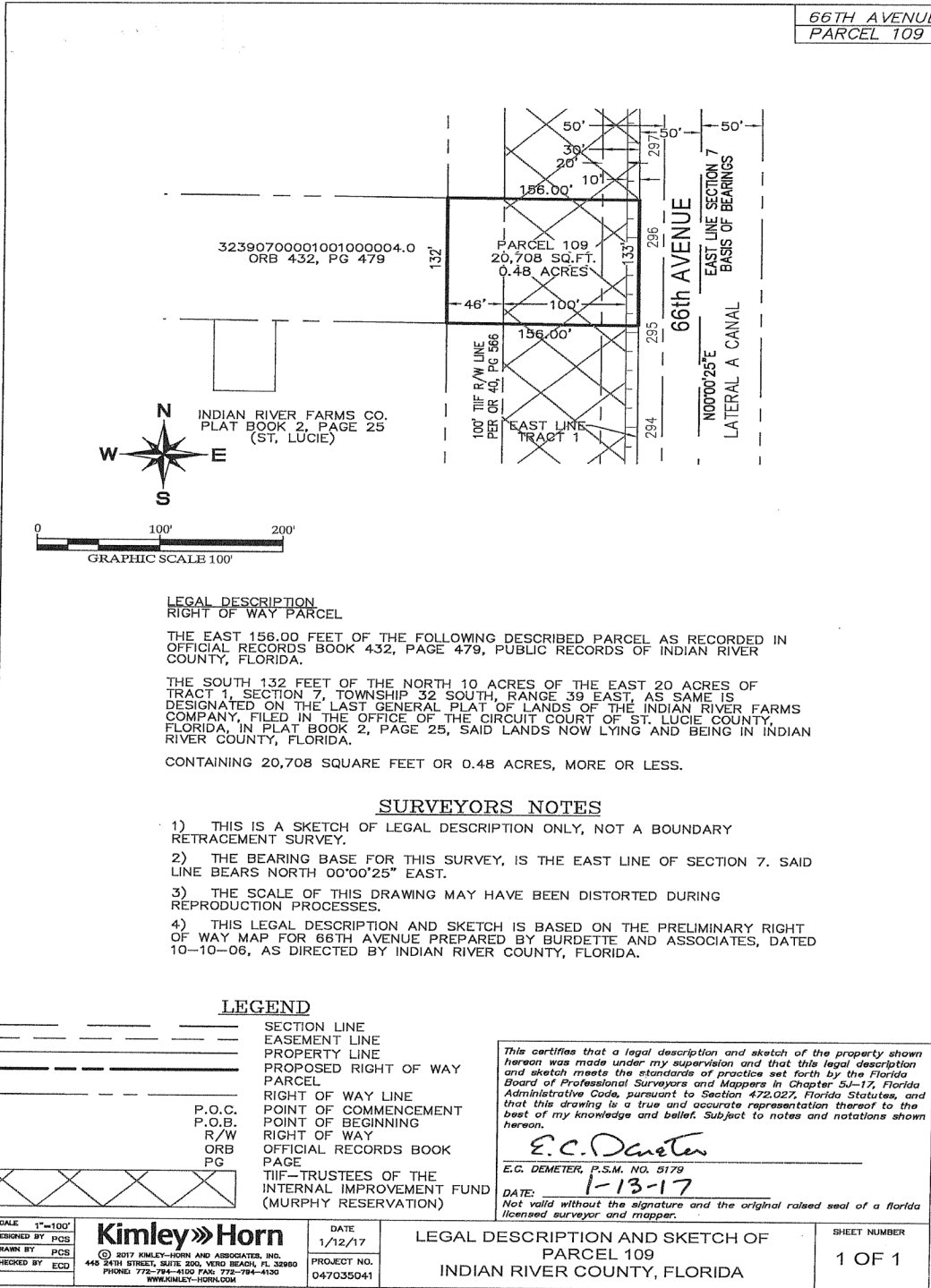


Figure 1

The Parcel is zoned A-1, Agricultural, up to one residential unit per five acres and lies outside of the Urban Services Boundary. This site is improved with a three-bedroom, two bath 1,448 square foot single family residence with a two car garage and a detached barn. The home was built in 1979.

Construction plans for this section of 66th Avenue call for the County to acquire 0.48 acres of right-of-way from the Jacksons consisting of a 133' wide by 156' deep strip along the length of the eastern border of the property. A sketch and legal description of the right-of-way is shown below as *Figure 2*.



The total property needed is ± 26% of the Parcel, leaving a remainder of 1.37 acres. A pre-suit mediation conference was held on June 28, 2019, with Mr. and Mrs. Jackson,

their attorney David Holloway, Rich Szpyrka, and the Deputy County Attorney in attendance. Attorney Randy Brennan was the mediator. At the mediation, the Jacksons expressed the desire to keep the house on the remainder property. County staff expressed concern over keeping the house on the parcel citing a close proximity to the new right-of-way line. After the road and sidewalk are constructed, the front of the house and garage will be about 16 feet from the new property line.

In past discussions with the Jacksons and their attorney, they inquired about acquiring the County owned corner lot at the southwest corner of 66th Avenue and 69th Street. In December 2011, the County purchased the corner lot to the north of the Jacksons' parcel for \$139,000. The 2.47 acre lot is now vacant and is depicted on the aerial photo as *Figure 3*.

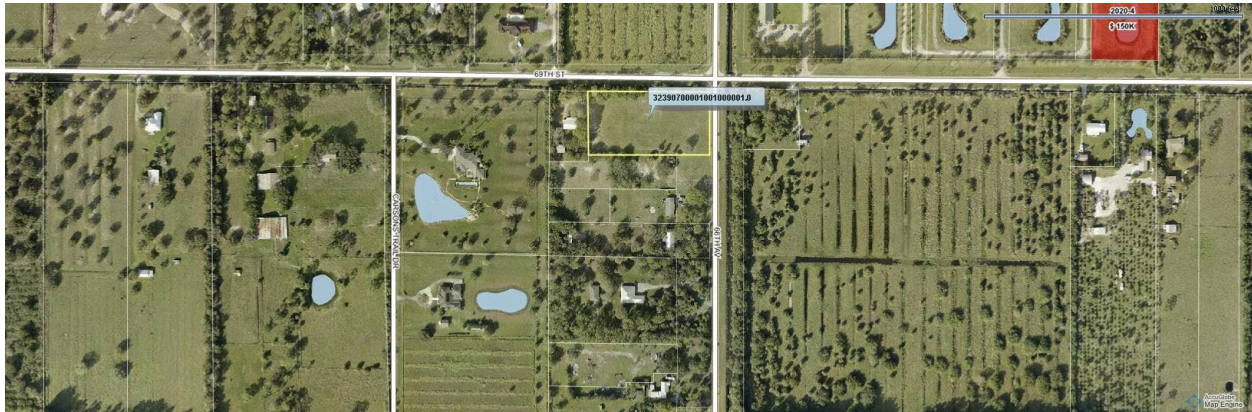


Figure 3

The right-of-way needed for 66th Avenue and 69th Street has not been cut out of the corner lot and after the right-of-way (approximately 0.84 acres) is deducted, the corner lot will be reduced to 1.63 acres. In the recent past, the County has paid \$29,880/acre for an arm's length purchase for the Greene property further south on 66th Avenue near 53rd Street. Using this per acre price, the value of the corner lot is estimated at \$48,704.00.

The County's initial appraisal of the Parcel was performed by Armfield & Wagner and they assigned a value of \$50,000 for the 0.47 acres of right-of-way and \$170,000 for the entire property. The appraiser retained by the Jacksons valued the Parcel at \$482,575 for a partial take and \$552,775 for the entire property.

After further discussion, the parties reached an agreement where the County would convey the 1.63 acre corner lot (Parcel 112) to the Jacksons and the sum of \$220,000 for the needed 0.48 acre right-of-way parcel (Parcel 109). The conditions of the sale are as follows:

1. The County (or its contractor) will construct a 18' driveway to the remainder Parcel 109 and a 18' driveway at the corner lot, Parcel 112.
2. The Jacksons will assume all risks of any drainage issues on Parcels 109 and 112 that may occur as a result of the 66th Avenue improvement project.

These conditions were approved by the Public Works Director.

Due to the close proximity of the new right-of-way line to the front of the house (about 16 feet), most eminent domain appraisers would deem the house either a significant or total loss. In arriving at the settlement amount, staff reasoned that its own appraiser deemed the value of the whole parcel to be \$170,000 and that the resale value of the corner lot property would be compromised by its smaller size for the area (less than 5 acres), making it most valuable to nearby property owners like the Jacksons.

The Jacksons sought appraisal, engineering and land planning fees in the amount of \$22,983.75 which was negotiated downward to \$19,540 and attorney's fees pursuant to the eminent domain statute of 33% of the benefit gained for the client ($\$220,000 - 50,000 = \$170,000 \times 0.33 = \$56,100$), compromised to \$48,000 making the total cost to purchase \$287,540.00. In the interest of settlement, Mr. Holloway agreed to waive any right to attorney's fees associated with the non-monetary benefits obtained as a result of acquiring the adjacent property and the driveways listed as a condition of the sale.

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 attached to this memo as Exhibit "A".

FUNDING: Funding in the amount of \$287,540 for this acquisition is budgeted and available from Traffic Impact Fees/District I/ROW/66th Ave-65th Street -85th Street-Acct#10215141-066120-16009.

STAFF RECOMMENDATION: Staff recommends the Board approve conveying the adjacent property to the Jacksons, approve the mediation agreement to purchase the 0.48-acre Jackson property for \$220,000 with the stated conditions, approve costs incurred by the Jacksons of \$19,540 and approve the settlement of attorney's fees of \$48,000 and authorize the Chairman to execute the Pre-Suit Mediation Settlement Agreement on behalf of the Board.

Attachment Pre-Suit Mediation Settlement Agreement

Copy to: David Holloway, Esq.