



Office of

Attorney's Matters 05/05/2020

**INDIAN RIVER COUNTY
ATTORNEY**

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

TO: Board of County Commissioners

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

FROM: William K. DeBraal, Deputy County Attorney

DATE: April 30, 2020

SUBJECT: Approval of Agreement to Purchase and Sell with Gene Perry and the Estate of Helen Johnson for 45th Street/US Highway 1 Intersection Improvements

The County has plans to improve the US Highway 1 - 45th Street intersection to include an east bound right turn/through lane with a dedicated left turn lane. The boundaries of the project extend westward on 45th Street approximately 300 feet west of the railroad tracks and provide for an east bound right turn lane onto Old Dixie Highway and an east bound left turn/through lane. Gene Perry and the Estate of Helen Johnson own the parcel of property on the northeast corner of Old Dixie Highway and 45th Street as shown below as Figure 1.



Figure 1. Aerial view of Gene Perry's Property

The property is 0.74 acres in size and is zoned IL, light industrial. Improvements to the property include a 720 sq. ft. single family, wood frame home with two porches, one on the front of the house and the other on the back.

In order to complete the improvement project, the County must acquire a 301 sq. ft. corner clip (0.007 acres) from Mr. Perry and the Estate. The parcel needed is a 39.81' by 25' by 25' triangular shaped parcel on the southwest corner of the property. The part taken is unimproved with no landscaping and will be used for a mast arm signal. The sketch and legal description are shown below as Figures 2 and 3.

<u>LEGAL DESCRIPTION: RIGHT OF WAY ACQUISITION</u>									
<p style="text-align: center;"><u>Legal Description</u></p> <p>Being a Parcel of land lying in Section 23, Township 32 South, Range 39 East, said parcel also being a portion of a Tract of land as recorded in Official Record Book 754, Page 2321 of the Public Records of Indian River County, Florida, said parcel being more particularly described as follows:</p> <p>Commence at the Intersection of the Centerline of Right-of-Way of Old Dixie Highway as shown on the Old Dixie Highway Right-of-Way Map, per Plat Book 24, Page 81, of the public records of Indian River County, Florida, with the South line of Section 23, Township 32 South, Range 39 East; Thence South 89°46'13" East, along the said South line of Section 23, a distance of 52.31 feet; Thence departing said South line, North 00°13'47" East, a distance of 25.00 feet to a point on the North Right-of-Way line of 45th Street (being a 50 foot wide Right-of-Way) as recorded in Official Record Book 120, Page 573, Public Records of Indian River County, Florida, said point being the Point of Beginning;</p> <p>Thence North 89°46'13" West, along said North Right-of-Way line (said Right-of-Way being 25.00 feet North of and parallel with as measured at right angles to the South line of said Section 23) a distance of 25.00 feet to the East Right-of-Way line of Old Dixie Highway (being a 66 foot wide Right-of-Way) as shown in Plat Book 24, Page 81 of said Public Records; Thence North 15°15'55" West, along said East Right-of-Way line a distance of 2.45 feet to the Beginning of a tangent curve concave to the Southwest having a radius of 5762.58 feet; Thence Northwesterly along the arc of said curve and said East Right-of-Way line through a central angle of 00°09'52", a distance of 16.55 feet; Thence departing said East Right-of-Way line, South 52°32'42" East, a distance of 39.81 feet to the said North Right-of-Way line of said 45th Street and the Point of Beginning.</p> <p>Containing: 301 square feet, more or less</p> <p style="text-align: center;"><u>Legend and Abbreviations</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> COR = CORNER Co. = COMPANY ESMT = EASEMENT I.R.F.W.C.D. = INDIAN RIVER FARMS WATER CONTROL DISTRICT O.R.B. = OFFICIAL RECORDS BOOK MAG = MAGNETIC PROP = PROPERTY P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER R = RADIUS RGE = RANGE </td> <td style="width: 50%; border: none;"> RAW = RIGHT OF WAY SEC = SECTION-TOWNSHIP-RANGE D = CENTRAL ANGLE P.B.S. = ST. LUCIE COUNTY PLAT BOOK P.I.D. = PARCEL IDENTIFICATION P.O.B. = POINT OF BEGINNING P.O.C. = POINT OF COMMENCEMENT P.T. = POINT OF TANGENT TWP = TOWNSHIP </td> </tr> </table>	COR = CORNER Co. = COMPANY ESMT = EASEMENT I.R.F.W.C.D. = INDIAN RIVER FARMS WATER CONTROL DISTRICT O.R.B. = OFFICIAL RECORDS BOOK MAG = MAGNETIC PROP = PROPERTY P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER R = RADIUS RGE = RANGE	RAW = RIGHT OF WAY SEC = SECTION-TOWNSHIP-RANGE D = CENTRAL ANGLE P.B.S. = ST. LUCIE COUNTY PLAT BOOK P.I.D. = PARCEL IDENTIFICATION P.O.B. = POINT OF BEGINNING P.O.C. = POINT OF COMMENCEMENT P.T. = POINT OF TANGENT TWP = TOWNSHIP	<p style="text-align: center;"><u>Surveyor's Notes</u></p> <ol style="list-style-type: none"> 1) This sketch and Legal Description was prepared with the benefit of a Topographic Survey (Project No. 1355) prepared by Indian River County Personnel on the date of 2/23/15. 2) This legal description shall not be valid unless: <ol style="list-style-type: none"> (A) Provided in its entirety consisting of 2 sheets, with sheet 2 showing the sketch of the legal description. (B) Reproductions of the description and sketch are signed and sealed with an embossed surveyor's seal. 3) Bearings shown hereon are based on the Florida State Plane Coordinate System, as referenced to the North American Datum (NAD) 1983 adjustment of 2011, Florida East Zone, and are further referenced to the South line of Section 23 Township 32 South, Range 39 East, said line bears South 89°46'13" East. <p style="text-align: center;"><u>Certification</u></p> <p style="text-align: center;">(Not valid without the signature and original raised seal of a Florida licensed Surveyor and Mapper)</p> <p>I hereby certify that the Sketch and Legal Description of the property shown and described hereon was completed under my direction and said Sketch and Legal is true and correct to the best of my knowledge and belief.</p> <p>I further certify that this Sketch and Description meets the Minimum Technical standards for surveys set forth by the Florida Professional Board of Surveyors and Mappers in chapter 5J-17.052 Florida Administrative code, pursuant to section 472.027 Florida State Statutes.</p> <p style="text-align: right;"> Date of Signature: 5-11-16 David M. Silon Professional Surveyor and Mapper Florida Certificate No. 6139 </p> <p style="text-align: center; font-size: small;">THIS DRAWING DOES NOT REPRESENT A BOUNDARY SURVEY PREPARED FOR INDIAN RIVER COUNTY ENGINEERING DEPARTMENT</p>						
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INDIAN RIVER COUNTY ADMINISTRATION BUILDING 1801 27th STREET VERO BEACH, FL 32960 (772) 567-8000	 INDIAN RIVER COUNTY Department of Public Works Engineering Division	DRAWN BY: R. INGLETT APPROVED BY: D. SILON <table border="1" style="width: 100%; border-collapse: collapse; font-size: small;"> <tr> <td style="width: 50%;">SECTION 23</td> <td style="width: 50%;">SKETCH OF DESCRIPTION</td> </tr> <tr> <td>TOWNSHIP 32</td> <td>FOR</td> </tr> <tr> <td>RANGE 39</td> <td>PERRY PARCEL</td> </tr> </table>	SECTION 23	SKETCH OF DESCRIPTION	TOWNSHIP 32	FOR	RANGE 39	PERRY PARCEL	SHEET 1 OF 2
SECTION 23	SKETCH OF DESCRIPTION								
TOWNSHIP 32	FOR								
RANGE 39	PERRY PARCEL								
F:\Public Works\ENGINEERING DIVISION PROJECTS\1355-45th ST_US1 Left Turn Lane\Survey\1355-45th ST_US1 Left Turn Lane\1355-45th St and Dixie NE Corner Cut Sht-2-Lgl.dwg									

Figure 2. Legal description of the right-of-way parcel.

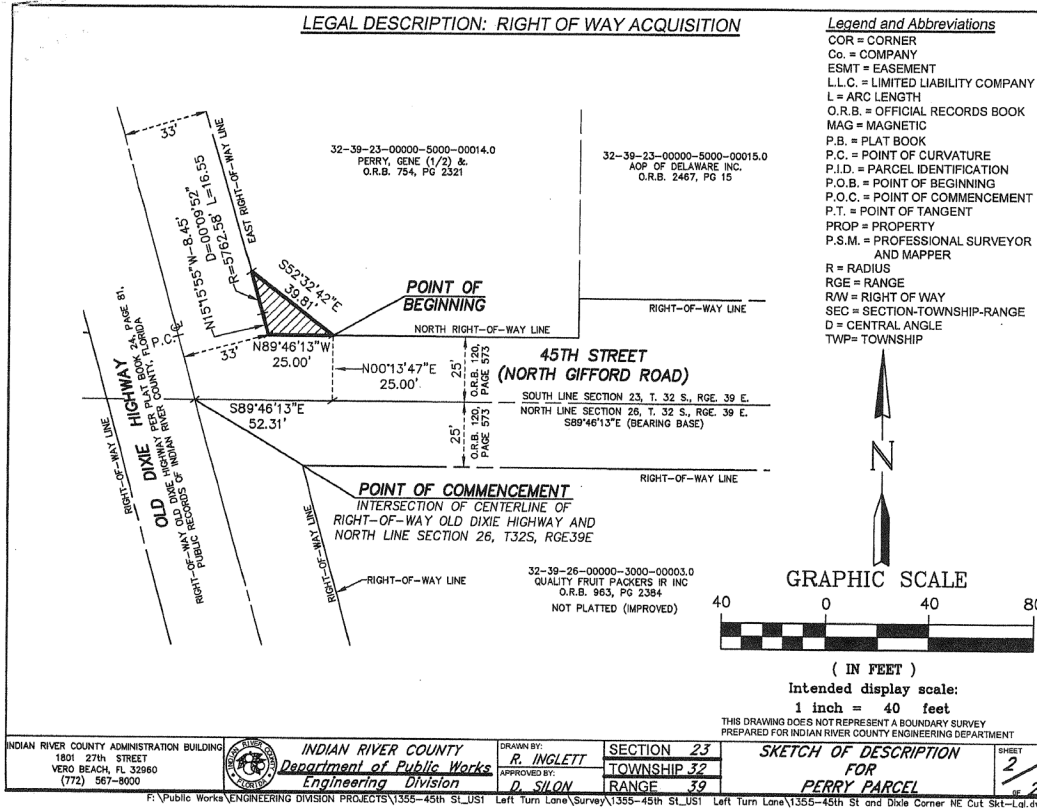


Figure 3. Sketch of Right-of-way parcel.

In order to arrive at a value for the property, the County obtained an appraisal from Armfield and Wagner. The initial appraisal report established a value of the whole 0.74 acre parcel of \$225,400, with the part to be taken valued at \$2,100. The appraisal did not include damages to the remainder parcel (severance). The County extended an offer to purchase to Mr. Perry and the Estate. An updated appraisal came in slightly higher at \$245,500 for the whole parcel and \$2,300 for the right-of-way needed.

After the offer was conveyed, staff was contacted by the firm of Neill Griffin from Ft. Pierce, the attorneys representing Mr. Perry. Staff learned that Helen Johnson had passed away and lived in Texas at the time of her death. This meant that her Estate would have to be probated in the State where she was domiciled at the date of her death. Probate of her Estate was necessary so the County could receive clear title to the needed right-of-way.

The Personal Representative of the Estate, Kenneth Johnson, was represented by Charles Holloman of Tampa, Florida. Mr. Perry and Mr. Johnson, through their attorneys, offered to sell the right of way for \$5,500 to be divided equally between the parties. The

co-owners incurred appraisal costs of \$6,605.00 and engineering costs of \$1,950.00 in engineering fees. Due to the size of the parcel and its rather low value, Florida Statutes allows for an attorney to charge an hourly fee for his work rather than the usual percentage of the benefit derived for the client. Mr. Neill is seeking \$13,650 in fees and costs based on 40.3 hours of work performed by himself and his associate, Mr. Osking. The attorney's fees have been reduced by almost \$5,000. Mr. Holloman is asking for \$3,750 for his 12.5 hours of time spent representing the Estate. The Agreement for Purchase and Sale of Real Estate is attached to this memorandum as Exhibit A. The total cost of this acquisition to the County is \$31,455. Continued negotiation of this matter is not recommended by the County Attorney's Office as the attorneys and expert witness fees will continue to increase without a corresponding benefit to the County.

The County Administrator does not support the attorney's fees and costs charged by Mr. Neil and Mr. Osking due to the fact that they far exceed the amount of the purchase and that they seem excessive relative to the amount of work necessitated by the purchase in his opinion.

Funding: Funding for this expenditure is budgeted and available from Optional Sales Tax/ROW/45th Street/left Turn Lane at US 1, Account # 31521441-066120-13013.

Recommendation: Staff recommends the Board approve the purchase and sale for the right-of-way from Gene Perry and the Estate at a price of \$31,455, inclusive of all fees and costs and authorize the Chairman to execute any documents necessary to close the purchase of the property.

Copies to: Richard Neill, Esq. Attorney for Gene Perry
Charles Holloman, Esq., Attorney for the Estate