



Office of

Attorney's Matters 09/10/2019

**INDIAN RIVER COUNTY
ATTORNEY**

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MEMORANDUM

TO: The Board of County Commissioners

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

FROM: William K. DeBraal, Deputy County Attorney

DATE: September 4, 2019

SUBJECT: Acquisition of Right-Of-Way for Phase II of 66th Avenue Improvements from Paul and Rennie Thompson – 7125 66th Avenue

Paul and Rennie Thompson (Thompsons) own a 1.09 acre parcel of property on the west side of 66th Avenue just north of 71st Street which is depicted on the aerial photo attached to this memorandum as Exhibit "A". 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 two bedroom, two bath 1,453 square foot single family residence. The Thompsons have owned and resided on the Parcel since 2005 and the Parcel has been in the Thompson family since 1954.

Construction plans for this section of 66th Avenue call for the County to acquire 0.63 acres of right-of-way from the Thompsons consisting of a 170' by 156' wide strip along the length of the eastern border of the property. A sketch and legal description of the right-of-way are attached to this memo as Exhibit "B". The total property needed is \pm 58% of the Parcel, leaving a remainder of 0.46 acres. As can be seen on Exhibit "B", the entire Thompson home is within the area of take. A settlement conference was held on March 18, 2019, with Mr. and Mrs. Thompson, their attorney Brent Simon, Rich Szpyrka, Monique Filipiak, and the Deputy County Attorney in attendance. At the conference, the Thompsons expressed their desire to remain on the remainder property and inquired about acquiring the County owned lots adjacent to the south and north of the Parcel. The Thompsons plan on building a new home utilizing the adjacent County owned lots. The adjacent property to the south was obtained in 2009 from Thomas O'Neal for \$255,000. The former O'Neal property was improved with a small home that was demolished after it was purchased by the County. The O'Neal property depicted on the sketch and legal

description attached to this memorandum as Exhibit "C", is a 0.26 acre parcel that is 90 feet wide and approximately 123 feet long, after the right-of-way needed for 66th Avenue is deducted. The adjacent property to the north was purchased in 2006 from Justo Hernandez for \$338,000. The northern property also contained a small house that was demolished after the property was purchased. After lessing out the property needed for 66th Avenue right-of-way, the Hernandez remainder parcel is 0.35 acres in size as depicted on the sketch and legal description attached to this memorandum as Exhibit "D". The end result is the Thompsons keeping their 0.46 acre remainder and when combined with the O'Neal remainder of 0.26 acres and the Hernandez remainder of 0.35 acres a new parcel of 1.07 acres is created.

The County's initial appraisal of the Parcel was performed by Armfield & Wagner and they assigned a value of \$150,000 for the entire property. Due to the fact that the entire house is within the area of take, no partial offer was made. The appraiser retained by the Thompsons valued the property at \$470,000 for a partial take.

After further discussion, the parties reached an agreement where the County would convey the 0.26 acre O'Neal parcel and the 0.35 acre Hernandez parcel to the Thompsons and the sum of \$275,000 for the needed 0.63 acre right-of-way Parcel. The conditions of the sale are as follows:

1. The Thompsons would have 12 months of extended possession at \$1.00 a month in their current home in order to give them sufficient time to complete the new residence to the west. The lease is subject to one 30 day extension if the new house is not completed.
2. At the time of construction of 66th Avenue, the County or its contractor will construct a 14' wide driveway at the parcel in compliance with County code at the Thompson's desired location.

These conditions were approved by Community Development and Public Works.

The Thompsons sought appraisal, engineering and land planning fees in the amount of \$13,610.00 and attorney's fees pursuant to the eminent domain statute of 33% of the benefit gained for the client ($\$275,000 - 150,000 = \$125,000 \times 0.33 = \$41,250$), making the total cost to purchase \$329,860. In the interest of settlement, Mr. Simon 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 conditions of the sale listed above.

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 state 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 and mediation is held. The County has achieved significant savings in this case by not having to hire our trial witnesses (appraiser,

engineer, arborist, residential general contractor and land planner), outside counsel and compromises on attorney's fees and expert costs.

At the conclusion of the settlement conference, the parties entered into a hand written agreement which was used as the basis for the Agreement to Purchase and Sell, attached as Exhibit "E".

FUNDING: Funding 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 O'Neal and the Hernandez property to the Thompsons, approve the agreement to purchase the 0.63 acre Thompson property for \$275,000 with the stated conditions, approve costs incurred by the Thompsons of \$13,610 and approve the settlement of attorney's fees of \$41,250 and authorize the Chairman to execute a lease for the property for one year at \$1.00 per month with one 30-day extension.

Attachments: Exhibit "A" Aerial Photo of Thompson Parcel
Exhibit "B" sketch and Photo of the right-of-way
Exhibit "C" sketch and description of the O'Neal property
Exhibit "D" sketch and description of the Hernandez property
Exhibit "E" Agreement to Purchase and Sell

Copies to: Brent Simon, Esq.