



Office of

Attorney's Matters 02/11/2020

**INDIAN RIVER COUNTY
ATTORNEY**

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: February 6, 2020

SUBJECT: Acquisition of Right-Of-Way for Phase II of 66th Avenue Improvements - Banack Family Limited Partnership - 66th Avenue and 61st Street, Parcels 301 and 302

The Banack Family Limited Partnership is the owner of two parcels of property at the northeast corner of 66th Avenue and 61st Street and are depicted on the aerial photo attached to this memorandum as Exhibit "A". The parcel directly on the corner of 66th Avenue and 61st Street is 39.2 acres and the parcel further east on 61st Street is 19.55 acres. The parcels are zoned A-1, Agricultural, up to one residential unit per five acres and lie outside of the Urban Services Boundary. The sites are former citrus groves and improvements include some fencing and a flow well with a pump. The Banacks also own 28.5 acres to the north of the 39.2-acre parcel making up a contiguous 87.25-acre parcel stretching between 61st and 65th Streets.

Construction plans call for the County to acquire the following from the Banacks:

- Parcel 301 which is made up of 1.47 acres of right-of-way consisting of a 50' X 1,277' wide strip along the entire length of the southern border of the 39.2-acre parcel; and
- A 2,500-square foot access easement along 61st Street on the property's southern border adjacent to the canal to continue to provide the Indian River Farms Water Control District access to canal right-of-way; and
- A 10' X 1,277' temporary construction easement along the access easement and east along the right-of-way strip from the 39.2-acre parcel; and
- Parcel 302 which is made up of 0.58 acres of right-of-way consisting of a 50' X 501.66' wide strip along the entire length of the southern border of the 19.55-acre parcel.

Please see the sketch and legal descriptions attached to the Pre-suit Mediation Settlement Agreement that depict these four property interests.

There are 24 mature pecan trees and some fencing along 61st Street that will be lost as part of the take. These trees are approximately 30" in diameter and range in health from distressed to average condition due to their age. Pecan trees once lined 61st Street forming the basis for the alternate name of Pecan Grove Road for 61st Street.

The County's appraisal for Parcels 301 and 302 were performed by Armfield & Wagner. The appraisals assigned values as follows:

Parcel 301	1.47 acres @ \$20,000/acre + \$3,000 improvements = \$32,400
Parcel 302	0.58 acres @ \$22,000/acre + \$1,500 improvements = <u>\$14,260</u>
	Total for Parcels 301 and 302 <u>\$46,660</u>

The appraisals did not find any severance damages. The appraisals did attach a value of \$3,000 and \$1,500 respectively, for the gate and fencing that runs parallel to 61st Street but did not assign a value to the pecan trees that lie within the area of take. Likewise, there was no value assigned to the permanent access easement or the temporary construction easement needed for the improvements to 61st Street.

The Banacks, accompanied by their attorney, attended a pre-suit mediation with Randy Brennan as the mediator, and staff consisting of Rich Szpyrka, Susan Prado, Monique Filipiak and Bill DeBraal on November 24, 2019. Staff and the Banacks agreed on the terms of the Pre-suit Mediation Settlement Agreement that is attached to this memorandum as Exhibit "B". The settlement terms are:

- The County will pay to the Banacks \$110,000 for right-of-way parcels 301 and 302, permanent access easement, temporary construction easement and inclusive of all severance damages, damages to the improvements and loss of the pecan trees.
- Statutory attorney's fees of \$20,955
- All costs and expert witness fees of \$2,500
- Two 24' wide driveways with 35' radii at locations to be determined by the Banacks

The total settlement cost to the County is \$133,455 plus the cost of the driveways. A sketch and legal description of Parcels 301 and 302 are attached to the Agreement as Exhibit "A".

By comparison, in February 2017, the County purchased the 18.72-acre Greene property located at the northeast corner of 66th Avenue and 53rd Street for a future stormwater park for \$558,900 (\$29,855 per acre) which was an arm's length transaction without the threat of eminent domain. The County previously purchased the Miami Block from Central

Groves at the southwest corner of 66th Avenue and 69th Street for \$35,250/acre for the entire 18.59 parcel (\$655,298.00) and \$42,500/acre for 13.78 acres from Central Groves on the west side of 66th Avenue at 61st Street.

By purchasing the Property in advance of filing a lawsuit, staff is attempting to save on expert witness fees incurred by both the County and the Banacks. 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. Pursuant to state statutes, the County is responsible for reasonable expert witness fees of the Banacks. The County has incurred significant savings by not having to hire our trial witnesses (appraiser, engineer and land planner) and outside counsel.

The Banacks are represented by Nicholas Dancaescu of the law firm of Gray Robinson in Orlando.

STAFF RECOMMENDATION: Staff recommends the Board approve the Pre-suit Mediation Settlement Agreement for the Banack property and authorize the Chairman to execute the document on behalf of the Board.

FUNDING: Funding for this acquisition is budgeted and available from Optional Sales Tax/Row/66th Avenue- 49th Street-65th Street- Acct# 31521441-066120-07806.

Attachments: Exhibit "A" Aerial Photo
Exhibit "B" Pre-suit Mediation Settlement Agreement with the sketch and legal description of right-of-way Parcels 301 and 302

Copies to: Nicholas Dancaescu, Esq.