



Office of

Attorney's Matters 04/16/2019

**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
William K. DeBraal, Deputy County Attorney
Kate Pingolt Cotner, 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: April 9, 2019

SUBJECT: Acquisition of Right-Of-Way for Phase II of 66th Avenue Improvements Central Groves Corp. - 66th Avenue and 61st Street

Central Groves Corp. is the owner of a 56.23 acre parcel of unimproved property on the west side of 66th Avenue between 61st and 65th Streets and is depicted on the aerial photo attached to the Agreement to Purchase and Sell Real Estate (Agreement) 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 a former citrus grove and contains fencing and a flow well. Mr. Ben Bailey is the sole officer of Central Groves Corp.

Construction plans call for the County to acquire 13.78 acres of right-of-way consisting of:

- A 156-foot wide strip along the length of the eastern border of the Central Grove property;
- A 50-foot wide strip along 61st Street on the southern property border; and
- A corner clip at the southeast corner of the parcel.
- A 1.50 acre parcel at the northern end and a 1.61 acre parcel at the southern end of the property for stormwater treatment ponds.

The County originally planned to locate a 2.48 acre pond in the middle of the parcel but opted to use two smaller ponds to reduce the impact to the remainder parcel and to reduce severance damages. The total property needed is 13.78 acres or $\pm 25\%$ of the property, leaving a remainder of 42.45 acres. A sketch and legal description of the right-of-way, corner clip and pond sites are attached to the Agreement as Exhibit "B".

The County's initial appraisal was performed by Armfield & Wagner and assigned a value of \$242,000 for the original 13.14 acres (\$18,417 per acre) of property needed but did not find any severance damages. When Central Groves asked to move the pond to the ends of the parent parcel, the County's engineer estimated it would take 3.11 acres for two ponds rather than the original 2.48 acres for the one pond, which is an increase of 0.63 acres. Staff agreed to go with the two pond system as it was not a significant increase in construction costs, offered equal stormwater treatment, accommodated the landowner's preference and reduced potential severance damages.

Central Groves had listed the property earlier in 2018 with an asking price of \$49,500 with a sale price in the \$40-45,000 per acre range. After holding a settlement conference in February 2019, staff and Central Groves agreed on a price of \$42,500 per acre for the 13.78 acres of right-of-way and pond sites for a purchase price of \$585,650. The appraiser for Central Groves did find severance damages to the remainder at a 25% reduction in value. With the relocation of the stormwater ponds, Central Groves agreed to a reduction in severance damage to the remainder of 12.5%, calculated to be:

$$\$42,500/\text{acre} \times 12.5\% = \$5,312.50/\text{acre in damages} \times 42.45 \text{ acres remainder} = \$225,515.00 \text{ severance}$$

for a cost to acquire the Property of $\$585,650 + 225,515 = \$811,165.00$. A sketch and legal description of the Property is attached to the Agreement as Exhibit "C". The Purchase Price and severance damages are inclusive of all compensation for damages incurred by Central Groves as a result of the County's proposed take of the Property.

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 at the southwest corner of 66th Avenue and 69th Street for \$35,250/acre for the entire 18.59 parcel (\$655,298.00).

There are appraisal, engineering and land planning fees in the global amount of \$25,417.00 and attorney's fees and costs equal to 15% of the total purchase price or \$121,674.75, making the total cost to purchase \$958,256.75.

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 Central Groves. 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 Central Groves. The county has incurred significant savings by not having to hire our trial witnesses (appraiser, engineer and land planner), outside counsel and compromises on attorney's fees and severance damages.

Central Groves Corp.

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Central Groves is represented by Andrew Diaz of the law firm of Gaylord Merlin in Tampa.

FUNDING: Funding in the amount of \$958,257 for this acquisition is budgeted and available from Traffic Impact Fee/District I/Row/66th Avenue- 69th Street-85th Street-Acct# 10215141-066120-16009.

STAFF RECOMMENDATION: Staff recommends the Board approve the Agreement to Purchase and Sell Real Estate for the Central Groves property and authorize the Chairman to execute the document on behalf of the Board.

Attachments: Agreement to Purchase and Sell Real Estate

Exhibit "A" Aerial Photo

Exhibit "B" sketch and legal description of the right-of-way and corner clip

Exhibit "C" pond sites sketch and legal description

Copies to: Andrew Diaz, Esq.