



Office of

Attorney's Matters June 2, 2020

**INDIAN RIVER COUNTY  
ATTORNEY**

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

TO: Board of County Commissioners

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

FROM: William K. DeBaal, Deputy County Attorney

DATE: May 28, 2020

SUBJECT: Settlement of Attorney's Fees for Gene Perry for 45<sup>th</sup> Street/US Highway 1 Intersection Improvements

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On May 5, 2020, the Board considered purchase of a parcel of property from Gene Perry and the Estate of Helen Johnson for the US Highway 1 - 45<sup>th</sup> Street intersection project. Gene Perry and the Estate of Helen Johnson own the parcel of property on the northeast corner of Old Dixie Highway and 45<sup>th</sup> Street as shown below as Figure 1.



Figure 1. Aerial view of Gene Perry's/Estate 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 home.

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 part taken is unimproved with no landscaping and will be used for a mast arm signal. The sketch is shown below as Figure 2.

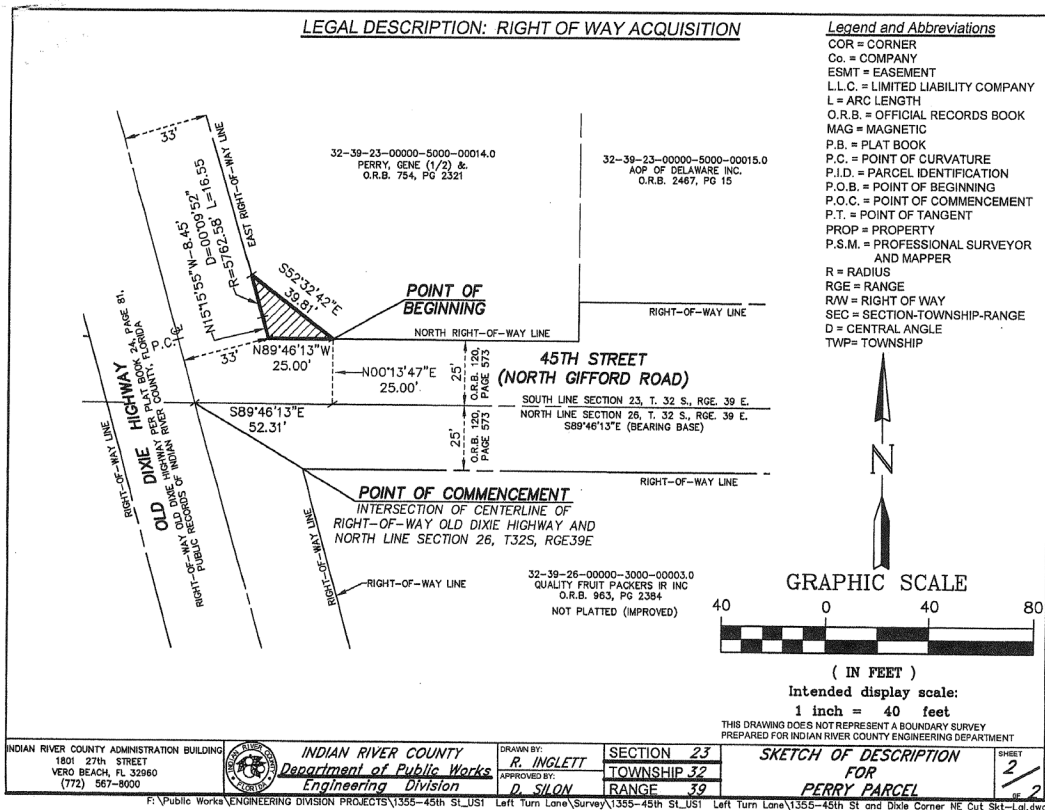


Figure 2. Sketch of Right-of-way parcel.

After considering the presentation by staff, the Board voted 4-1 to approve the following:

- Purchase of the needed right-of-way for \$5,500 to be divided equally between the Estate and Mr. Perry.
- Appraisal costs of \$6,605.00 and engineering costs of \$1,950.00.
- Attorney's fees in the amount of \$3,750 for Charles Holloman, attorney for Mr. Johnson, the Personal Representative of the Estate.
- Attorney's fees for Richard Neill, attorney for Gene Perry, in the amount of \$1,122. The Board calculated the fee using the statutory formula as follows:

$$\$5,500 \text{ purchase price} - \$2,100 \text{ initial offer} = \$3,400 \text{ benefit for client} \times 33\% = \$1,122$$

Mr. Neill was seeking \$13,650 in fees and costs based on 40.3 hours of work performed by himself and his associate, Mr. Osking, which was a reduction in fees of almost \$5,000. The Board reasoned the fee was too high in light of the small size of the parcel and countered with the fee calculated by the statutory method.

In response to the Board's action, Mr. Neill sent the attached letter. In an effort to resolve the attorney's fee issue, Mr. Neill proposes that the County and Mr. Neill choose a mutually agreeable attorney experienced in litigation and submit documents and arguments in support of the respective side's position. The attorney would render a decision and both sides would be bound by that decision. Staff supports this proposal for resolution of the attorney's fee issue. To have a court decide the dispute would involve filing suit, retention of expert witnesses and hearing time, which would involve more time and increased costs. Mr. Neill has agreed that the closing on the property may move forward while the attorney fee issue is being resolved. Staff anticipates hiring of the attorney to determine the appropriate fee amount will cost approximately \$600.

**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 accept Mr. Neill's proposal for the attorney's fee dispute and agrees to be bound by the conclusion of the attorney mutually agreed upon by the parties.

Copies to: Richard Neill, Esq. Attorney for Gene Perry