



Office of

Attorney's Matters 04/16/2019

**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: April 10, 2019

SUBJECT: Acquisition of Right-Of-Way for Phase III of 66th Avenue Improvements from Audestine and Jackye Hudson - 66th Avenue and 73rd Street

Audestine and Jackye Hudson (the Hudsons) are the owners of a 4.53 acre parcel of property on the west side of 66th Avenue just south of 73rd 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 a current citrus grove and contains fencing, irrigation and a flow well. The Hudsons have owned the property since 1992 and it has been used as a grove ever since that time. Mr. Hudson retired from the citrus business and uses this 4.53 acre parcel to grow and sell fruit as a hobby and a source of income.

Construction plans call for the County to acquire 3.13 acres of right-of-way from the Hudsons consisting of a 156-foot wide strip along the length of the eastern border of the property. A sketch and legal description of the right-of-way is attached to this memo as Exhibit "B". The total property needed is $\pm 69\%$ of the parcel, leaving a remainder of 1.4 acres. A settlement conference was held on March 18, 2019, with Mr. and Mrs. Hudson, their attorney Brent Simon, Rich Szpyrka, Monique Filipiak, James Ennis and the Deputy County Attorney in attendance. At the conference, Mr. Hudson claimed that in the after condition, 1.4 acres was insufficient to continue his citrus operation. It was his preference to sell the entire 4.53 acre parcel. The County would also avoid severance damages to the remainder parcel if it would buy the entire parcel.

The County's initial appraisal was performed by Armfield & Wagner and assigned a value of \$95,500 for the 3.13 acres of right-of-way property needed and \$110,300 for the entire 4.53 acres (\$24,349/acre). Since the Hudsons have decided to sell the entire parcel, they no longer have a need for the various equipment used to operate the grove. This equipment consists of:

- ❖ A Ford Tractor
- ❖ Bush hog
- ❖ Fertilizer spreader
- ❖ Rhino lawn mower
- ❖ Golf car
- ❖ 150 gallon tank and trailer
- ❖ A plow
- ❖ Metal shed

Mr. Hudson placed a value of \$21,120 for this equipment. He further placed a value on the citrus trees and irrigation system at \$176,000.

After further discussion, the parties reached an agreement where the County would purchase the entire 4.54 acres of the Hudson property together with all of the above listed equipment for \$230,000. The purchase price was arrived at using the \$35,250/acre price paid to Central Groves for the Miami Block at 69th Street and 66th Avenue ($\$35,250 \times 4.54 \text{ acres} = \$160,035$), the \$21,120 for the equipment and the remainder for the trees and irrigation system. Depending on the condition of the equipment, it can be utilized by either the Parks Department, Public Works or sold as surplus.

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) which was under the threat of eminent domain.

The Hudsons sought appraisal, engineering and land planning fees in the amount of \$14,447.00 and attorney's fees pursuant to the eminent domain statute of 33% of the benefit gained for the client ($\$230,000 - \$110,300 = \$119,700 \times 0.33 = \$39,501$). The parties reached a compromised amount of \$51,000 for all expert costs and attorney's fees, making the total cost to purchase \$281,000.

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 the County and the

Hudsons. 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 Hudsons. The county has achieved significant savings by not having to hire our trial witnesses (appraiser, engineer 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 will be used as the basis for a more formal agreement setting forth the closing date and time.

FUNDING: Funding in the amount of \$281,000 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 the 4.54 acre Hudson property with the equipment for \$230,000 and approve the global settlement of attorney's fees and expert costs of \$51,000 and authorize the Chairman to execute a more formal purchase and sale agreement when drafted and approved by the parties on behalf of the Board.

Attachments: Exhibit "A" Aerial Photo
Exhibit "B" sketch and legal description of the right-of-way

Copies to: Brent Simon, Esq.