

13.B
2015-017
4-14-2015

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (hereinafter "Agreement") is entered into as of the Effective Date provided for herein by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida (hereinafter "COUNTY") and the CITY OF VERO BEACH, a Florida municipal corporation (hereinafter "CITY") in order to provide for release of certain contractual land use restrictions encumbering the CITY-owned former Dodgertown nine-hole golf course property and CITY cooperation and assistance regarding certain roadway improvement projects for Aviation Boulevard, 43rd Avenue, and State Road 60 in the area of 43rd Avenue. COUNTY and CITY may also be referred to herein as a "Party" or collectively as the "Parties."

RECITALS:

WHEREAS, on November 17, 2005, the CITY purchased 37+/- acres of real property commonly known as the former Dodgertown nine-hole golf course (hereinafter "City Property"); and

WHEREAS, on November 17, 2005, the CITY, Los Angeles Dodgers, LLC (hereinafter "DODGERS") and DT Commons, LLC (hereinafter "DT COMMONS") executed that certain *Second Amendment to the Collateral Development Agreement*, recorded on November 17, 2005, which provided at paragraph 3 that the CITY shall develop the City Property solely as (i) a municipally-owned public golf course, or (ii) green space, or (iii) park-like setting, or (iv) any combination of the foregoing three uses (hereinafter "Use Restrictions"); and

WHEREAS, pursuant to said *Second Amendment to the Collateral Development Agreement*, the CITY was not to develop and/or permit the use of the City Property for any other use or purpose whatsoever without the prior written consent of both the Dodgers and the County, which consent could be granted or denied by either the DODGERS or the COUNTY in the exercise of their respective sole and absolute discretion; and

WHEREAS, on November 17, 2005, the CITY and the DODGERS executed that certain *Declaration of Covenants, Conditions, and Restrictions*, recorded on November 17, 2005, limiting the City's use of the City Property to the Use Restrictions as stated in the *Second Amendment to the Collateral Development Agreement*; and

WHEREAS, in February 2008, the COUNTY succeeded to all interests of the DODGERS in said *Second Amendment to the Collateral Development Agreement* and *Declaration of Covenants, Conditions, and Restrictions*, as outlined in Article 3 of the Third Amendment to Facility Lease Agreement dated February 19, 2008, and recorded on March 17, 2008, leaving the COUNTY and the CITY as the sole parties in interest with respect to the documents as they relate to the City Property; and

WHEREAS, on June 1, 2011, the COUNTY and the CITY completed an exchange of certain parcels of land included in the original *Collateral Development Agreement*, dated and recorded on August 29, 2001, in order for the COUNTY to develop a cloverleaf ball field on a 11.93 acre parcel (hereinafter "Cloverleaf Property"); and

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RECORDED IN THE PUBLIC RECORDS OF
JEFFREY R SMITH, CLERK OF COURT
INDIAN RIVER COUNTY FL
BK. 2840 PG: 1541 Page 1 of 26 4/21/2015 3 32 PM

WHEREAS, on May 3, 2011, in light of the Use Restrictions in paragraph 3 of the *Second Amendment to Collateral Development Agreement* and the COUNTY's reserved right of consent provided therein to allow other uses, the COUNTY's Board of County Commissioners (hereinafter "Board") adopted Resolution 2011-34, recorded on August 11, 2011, whereby the COUNTY gave its written consent to allow the Cloverleaf Property to be developed by the COUNTY into (i) baseball fields, or (ii) any purpose consistent with the purposes of the baseball facilities as defined in the 2001 *Collateral Development Agreement*; and

WHEREAS, on June 1, 2011, the COUNTY and the CITY executed the *First Amendment to Declaration of Covenants, Conditions, and Restrictions*, recorded on August 11, 2011, to remove the Use Restrictions on the Cloverleaf Property and transfer such Use Restrictions to the 10.38 acre parcel the CITY received in that parcel exchange; and

WHEREAS, the COUNTY has planned or is planning certain roadway improvement projects for Aviation Boulevard, 43rd Avenue, and State Road 60 in the vicinity of 43rd Avenue (hereinafter collectively "Roadway Projects"), all of which Roadway Projects are in the general vicinity of the City Property; and

WHEREAS, the City Council of the City of Vero Beach (hereinafter "Council") finds it desirable and has requested the cooperation and assistance of the COUNTY and the Board to terminate the *Declaration of Covenants, Conditions, and Restrictions* and remove from the aforementioned Board Resolution 2011-34, the *Second Amendment to the Collateral Development Agreement*, and the *First Amendment to Declaration of Covenants, Conditions, and Restrictions*, all language related to and imposing the Use Restrictions on the City Property; and

WHEREAS, the Board finds desirable and requests the cooperation and assistance of the CITY and Council in furtherance and accomplishment of the Roadway Projects in an efficient and economical manner; and

WHEREAS, at its August 19, 2014 Board meeting, the Board directed COUNTY staff to work with CITY staff on a joint agreement to release and discharge the Use Restrictions encumbering the City Property; and

WHEREAS, staff from both local governments have worked diligently together to draft the provisions of this Agreement in order to address and accomplish the purposes and intent hereof; and

WHEREAS, nothing in this Agreement shall modify the rights and obligations of the CITY and the COUNTY with respect to the Parking License Agreement, dated June 1, 2011, and recorded on August 11, 2011, and the License Agreement #2010-LA-0145 for Use of City Real Property (Signs), between the CITY and MILB Vero Beach, LLC, dated April 5, 2011, and recorded on April 7, 2011; and

WHEREAS, the Board and the Council have reviewed and duly considered this Agreement and find that the provisions contained herein serve important governmental purposes and are in the best interests of the public,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Adoption of Whereas Clauses.

The foregoing Recitals are true and correct and by this reference are incorporated herein and made a part hereof.

B. CITY Obligations.

Except as otherwise provided herein, City agrees to perform the following within three (3) months of the Effective Date of this Agreement:

- 1) Grant to the COUNTY a 0.20 acre parcel adjacent to 43rd Avenue for additional right of way (see Exhibit 1, attached hereto and incorporated herein); and
- 2) Grant the following easements to the COUNTY: (a) easements across the City Property to provide a drainage connection from Aviation Boulevard (26th Street) and 43rd Avenue to the Cloverleaf Property pond (see Exhibit 2, attached hereto and made a part hereof); (b) a drainage easement for that portion of the Cloverleaf Property pond constructed on the City Property (see Exhibit 3, attached hereto and incorporated herein); and (c) an access easement on certain portions of the City Property and other City-owned property adjacent to the south property line of the CITY and COUNTY parcels in accordance with the February 2011 *Property Exchange Agreement* executed between the Parties (see Exhibit 4, attached hereto and incorporated herein); and
- 3) Dedicate Tract A of Poinsettia Park lying south of Atlantic Boulevard and west of 42nd Avenue as public right-of-way and provide for it to be used by or transferred to the Florida Department of Transportation for improvements to State Road 60 (see Exhibit 5, attached hereto and incorporated herein); and
- 4) At such time as the CITY shall develop, sell or transfer its interest in or possession of the City Property, all future site plans and zoning requests shall maintain compatibility with the COUNTY's baseball facilities and other approved uses on the adjacent County property consistent with the CITY's land use regulations, and shall be required to meet the approval standards of Code section 64.10(a) that the site plan be consistent with the pertinent goals, policies, and objectives of the City Comprehensive Plan. Objective 3 of the Land Use Element of the City Comprehensive Plan provides for the establishment and maintenance of land use/development regulations that reduce and prevent land uses that are incompatible with adjacent development. The definitions of "compatible" and "incompatible" to determine consistency with this objective shall rely upon the definition in the latest edition of the Merriam Webster Dictionary. As a reviewing agency, COUNTY may provide comments to CITY staff

as part of the CITY development review process, which comments will be included in the staff report(s) for consideration by the reviewing appointed or elected bodies; and

- 5) Reconfigure the proposed right-of-way for Aviation Boulevard roadway improvements between 43rd Avenue and Flight Safety Drive so that no additional right-of-way will be necessary to be obtained from the property currently owned by DT Commons, LLC located south of Aviation Boulevard (see Exhibit 6, attached hereto and incorporated herein); and
- 6) Amend Temporary License Agreement for Use of Vero Beach Municipal Airport Property dated May 7, 2013 to extend the subject agreement for two (2) additional years, from the current termination date of May 7, 2015 to May 7, 2017, or whenever permanent Transit Hub facilities are completed and put into service, whichever is earlier ("Amended Agreement"). Said Amendment shall be executed by CITY prior to May 7, 2015. (see Exhibit 7, attached hereto and incorporated herein).

C. COUNTY Obligations.

County agrees to perform the following within three (3) months of the Effective Date of this Agreement:

- 1) Terminate the *Declaration of Covenants, Conditions, and Restrictions*, releasing the City Property from all Use Restrictions; and
- 2) Amend or otherwise modify Board Resolution 2011-34 and the *Second Amendment to Collateral Development Agreement* to release and remove reference to all Use Restrictions on the City Property; and
- 3) Grant the CITY a drainage easement over the Cloverleaf Property pond and outfall in accordance with the February 2011 *Property Exchange Agreement* between the parties (see Exhibit 8, attached hereto and incorporated herein); and
- 4) Incorporate a "Cure Plan" into the plans for the State Road 60 and 43rd Avenue roadway widening projects as mutually agreed upon by the CITY, COUNTY, and adjacent property owners, including but not limited to, extending the driveway connection from the businesses on Atlantic Boulevard west of 42nd Avenue to connect with Atlantic Boulevard opposite the driveway to Abbott's Frozen Custard (4140 20th St.), install a new irrigation well to replace the one currently in Poinsettia Park, and provide landscaping on both sides of the realigned Atlantic Boulevard at State Road 60 (see Exhibit 9, attached hereto and incorporated herein).

D. Notices. All notices and other formal communications hereunder shall be in writing and delivered to the recipient Party at its address below:

As to COUNTY:

Indian River County
Attention: County Administrator
1801 27th Street
Vero Beach, FL 32960

As to CITY:

City of Vero Beach
Attention: City Manager
1053 20th Place
P.O. Box 1389
Vero Beach, FL 32961-1389

E. Miscellaneous Provisions.

- 1) Subject to the terms and conditions of this Agreement, each of the Parties hereto will take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the intent and purpose of this Agreement, including, without limitation, from time to time after the execution and delivery of this Agreement and without further consideration, the Parties will, at their own expense, execute and deliver such documents to the other Party as such Party may reasonably request in order to evidence the consummation and accomplishment of said intent and purpose of this Agreement.
- 2) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for resolution of any dispute arising hereunder shall be in Indian River County, Florida.
- 3) This Agreement sets forth all the promises, agreements, conditions, and understandings, whether oral or written, between the Parties on the subject of this Agreement. No subsequent alteration, amendment, change, or addition to this Agreement will be binding on the Parties unless in writing and signed by them and made a part of this Agreement by direct reference.
- 4) In the event of any dispute or litigation relating to this Agreement, each party shall pay its own attorney's fees.
- 5) The terms of this Agreement shall be binding on the respective successors, contractors, representatives, agents, and permitted assigns of the Parties. However, neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party.
- 6) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all which together will constitute one and the same instrument.

F. Effective Date.

This Agreement shall become effective upon execution by both Parties, and after final written approvals by CITY's bond counsel, and by COUNTY's bond counsel, the cost of which reviews shall be borne by the respective Parties as to each Party's review.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed in their names, the day and year entered below.

Attest: Jeffrey R. Smith
Clerk of Court

By: Jeni Collins-Rieter
Deputy Clerk

[Seal]

Approved:

Joseph A. Baird
Joseph A. Baird
County Administrator

Attest:

Tammy Vock
Tammy Vock
City Clerk

[Seal]

Approved as to conforming to municipal policy:

James R. O'Connor
James R. O'Connor
City Manager

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

Wesley S. Davis
Wesley S. Davis, Chairman



BCC Approved: April 14, 2015

Approved as to form and legal sufficiency:

Dylan Reingold
Dylan Reingold
County Attorney

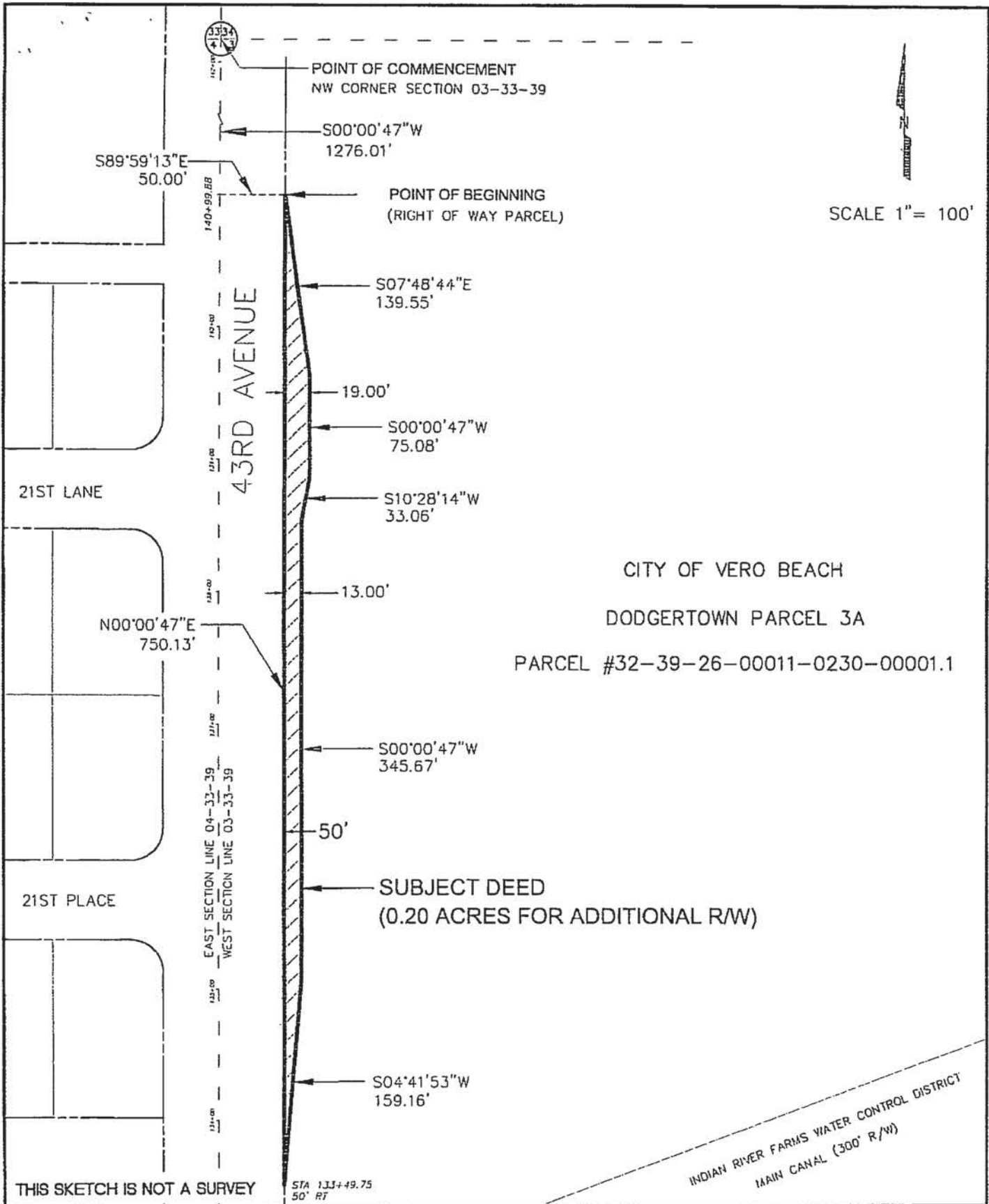
CITY OF VERO BEACH, FLORIDA

Richard G. Winger
Richard G. Winger
Mayor

Council Approved: 4-7-15

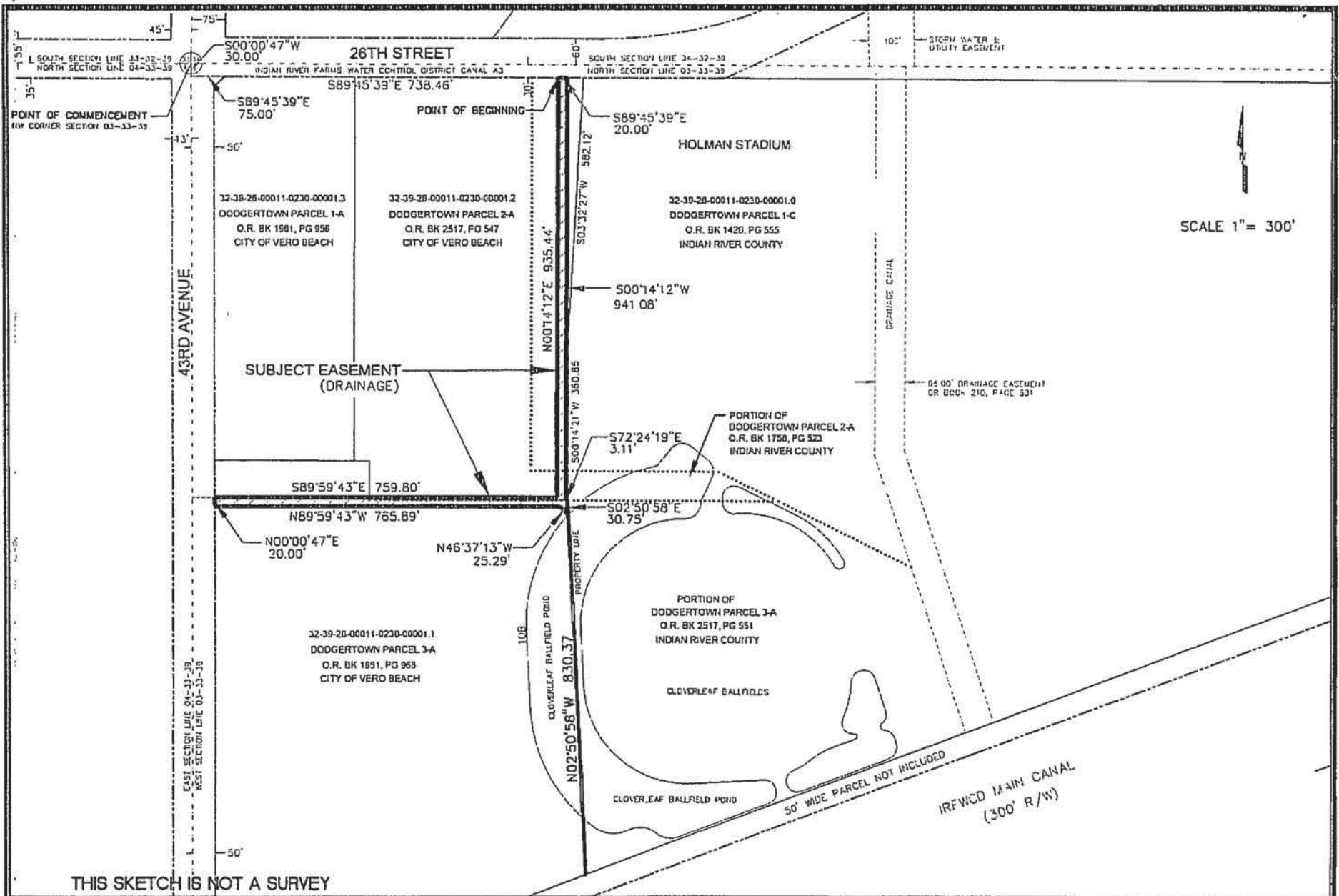
Approved as to form and legal sufficiency:

Wayne R. Coment
Wayne R. Coment
City Attorney



CITY OF VERO BEACH		SKETCH OF PROPERTY DESCRIPTION		EXHIBIT "1"		REV. NO.	AUTHZD. BY
DEPARTMENT OF PUBLIC WORKS		DEED OF RIGHT OF WAY		CITY PROJECT NO. 2011-07		DRWN. BY	DATE
SURVEY DIVISION		DODGERTOWN PARCEL 3A		DATE 09/2014	DRWN. BY DG	CHKD. BY MKF	DESCRIPTION
		SECTION 3-33-39					

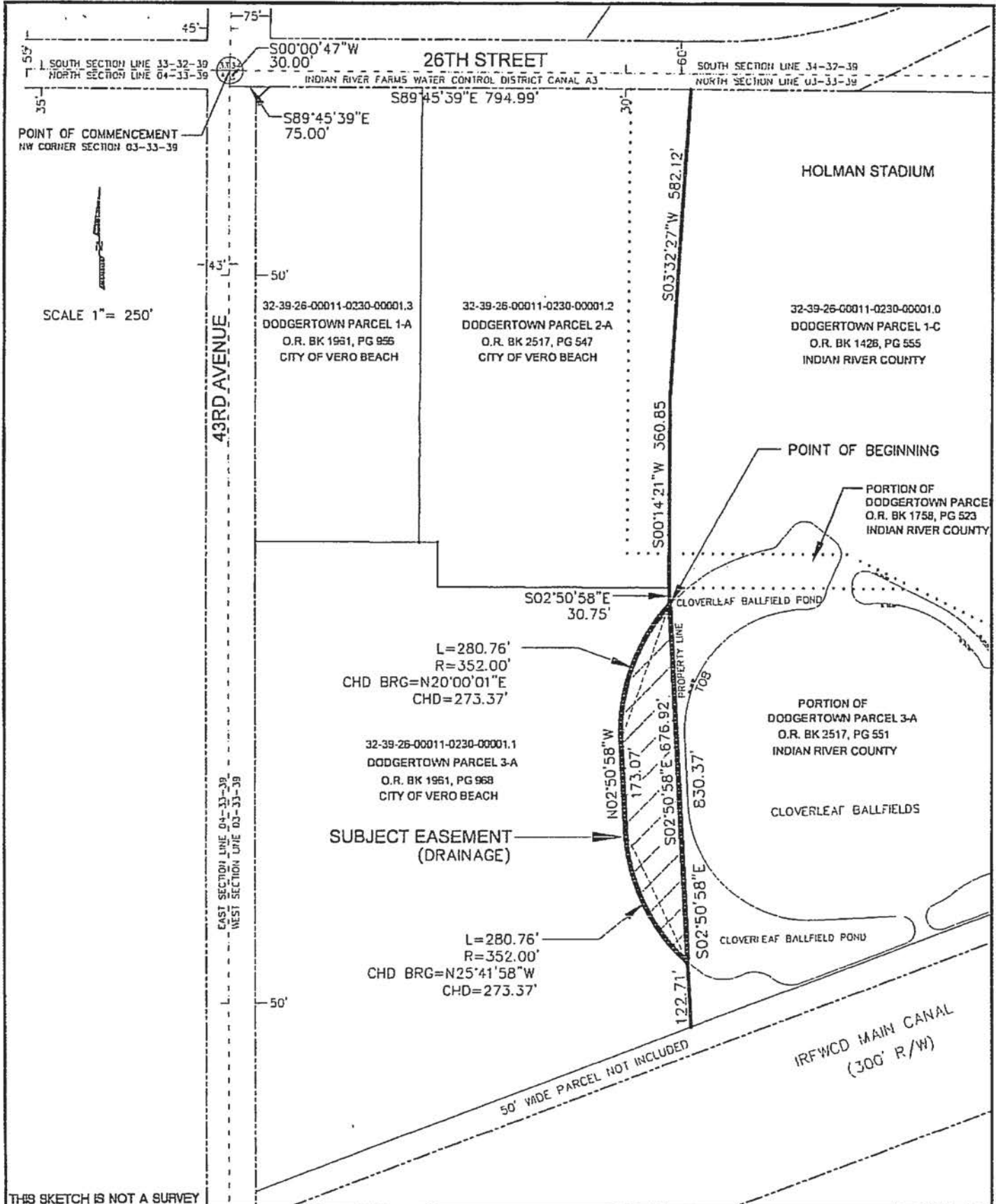
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THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS SURVEY DIVISION	SKETCH OF PROPERTY DESCRIPTION DRAINAGE EASEMENT TO COUNTY PORTION OF SECTION 03-33-39	EXHIBIT "2"		REV. NO.	AUTHORIZED BY
		CITY PROJECT NO. 2011-EG-097		DRAWN BY	DATE
DATE 09/2014	DRAWN BY DG	CHKD BY MKF	DESCRIPTION		

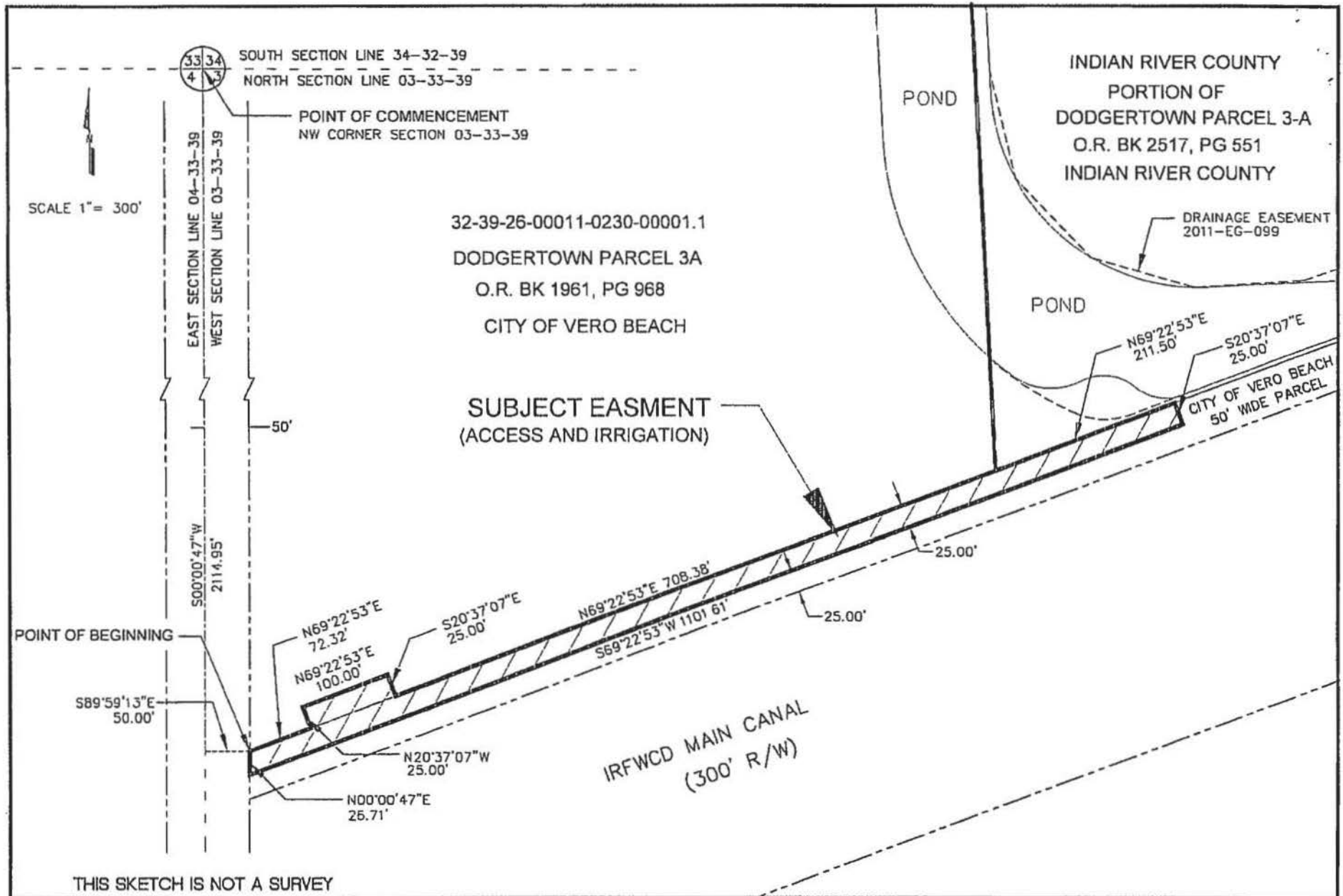
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THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS SURVEY DIVISION	SKETCH OF PROPERTY DESCRIPTION DRAINAGE EASEMENT TO COUNTY PORTION OF SECTION 03-33-39	EXHIBIT "3"		REV. NO.	AUTHRZD. BY
		CITY PROJECT NO. 2011-EG-09B		DRWN. BY	DATE
		DATE 9/2014	DRWN BY DG	MKF	DESCRIPTION

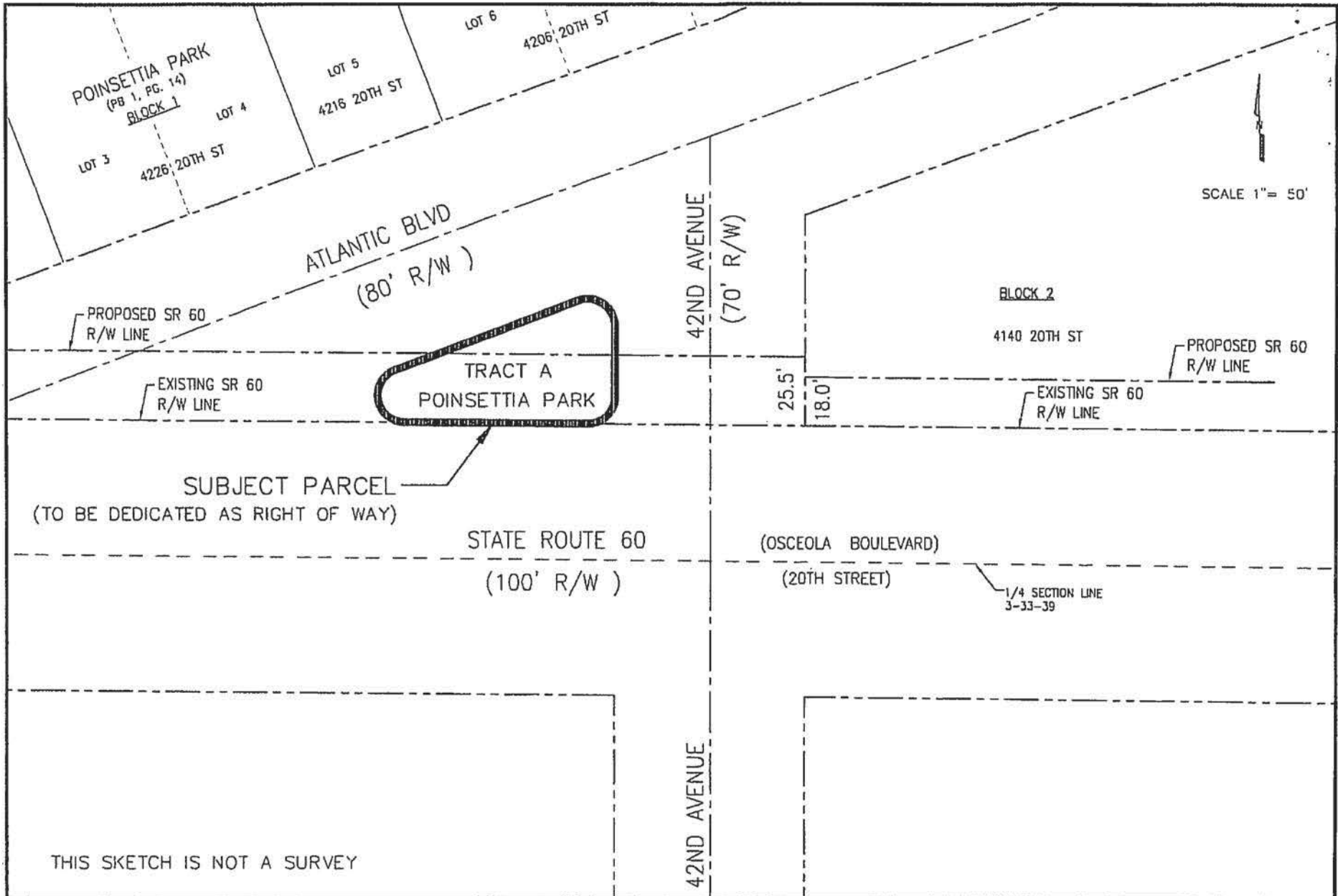
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THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTION ACCESS EASEMENT TO COUNTY PORTION OF SECTION 03-33-39	EXHIBIT "4"		REV. NO.	AUTHRZD. BY
DEPARTMENT OF PUBLIC WORKS		CITY PROJECT NO. 2011-EG-099	DRWN. BY	DATE	
SURVEY DIVISION		DATE 09/2014	DRWN BY DG	CHKD BY MKF	DESCRIPTION

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SUBJECT PARCEL
(TO BE DEDICATED AS RIGHT OF WAY)

TRACT A
POINSETTIA PARK

STATE ROUTE 60
(OSCEOLA BOULEVARD)
(20TH STREET)
(100' R/W)

ATLANTIC BLVD
(80' R/W)

42ND AVENUE
(70' R/W)

42ND AVENUE

BLOCK 2

4140 20TH ST

SCALE 1" = 50'

POINSETTIA PARK
(PB 1, PG. 14)
BLOCK 1

LOT 3

4226 20TH ST

LOT 4

LOT 5
4216 20TH ST

LOT 6

4206 20TH ST

EXISTING SR 60
R/W LINE

PROPOSED SR 60
R/W LINE

EXISTING SR 60
R/W LINE

PROPOSED SR 60
R/W LINE

1/4 SECTION LINE
3-33-39

THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS SURVEY DIVISION	SKETCH OF PROPERTY DESCRIPTION PROPOSED DEDICATION OF RIGHT OF WAY TRACT A, POINSETTIA PARK	EXHIBIT "5"		REV. NO.	AUTHORIZED BY
		CITY PROJECT NO. 2011-07		DRWN. BY	DATE
		DATE 09/2014	DRWN BY DG	CHKD BY MKF	DESCRIPTION

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