



Office of

Attorney's Matters 07/16/2019

**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
William K. DeBraal, Deputy 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: July 9, 2019

SUBJECT: Acquisition of Right-Of-Way Parcel 110 for Phase III of 66th Avenue Improvements from Doris and Billy Jackson, 6835 66th Avenue

Doris and Billy Jackson are the owners of a 1.85 acre parcel of property on the west side of 66th Avenue just south of 69th 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 improved with a three bedroom, two bath 1,302 square foot single family residence with an attached carport. The parcel has been owned by the Jackson family since the home was built in 1963.

Construction plans for this section of 66th Avenue call for the County to acquire 0.47 acres of right-of-way from the Jacksons consisting of a 131' wide by 156' deep strip along the length of the eastern border of the property. A sketch and legal description of the right-of-way are attached to this memo as Exhibit "B". The total property needed is \pm 25% of the Parcel, leaving a remainder of 1.38 acres. A pre-suit mediation conference was held on June 28, 2019, with Mr. and Mrs. Jackson, their attorney David Holloway, Rich Szpyrka, and the Deputy County Attorney in attendance. Attorney Randy Brennan was the mediator. At the mediation, the Jacksons expressed the desire to keep the house on the remainder property. County staff expressed concern over keeping the house on the parcel citing a close proximity to the new right-of-way line. After the road and sidewalk are constructed, the front porch will be about 10 feet from the new property line.

In past discussions with the Jacksons and their attorney, they inquired about acquiring the County owned lot adjacent to the north of the Parcel. In April 2009, the County purchased the adjacent property to the north of the Jackson's parcel for \$480,000. The

adjacent 1.75 acre parcel was improved with a 2,100 square foot home and a 720 square foot guest cottage. The property was leased back to the owners for a period of time before the buildings were demolished by the County. The remainder 1.28 acre site is now vacant. The adjacent property is depicted on the aerial photo attached to this memorandum as Exhibit "C", but the right-of-way needed for 66th Avenue is not deducted. In the recent past, the County has paid \$29,880/acre for an arm's length purchase for the Greene property further south on 66th Avenue near 53rd Street. Using this per acre price, the value of the adjacent parcel is estimated at \$38,246.40.

The County's initial appraisal of the Parcel was performed by Armfield & Wagner and they assigned a value of \$45,000 for the 0.47 acres of right-of-way and \$145,000 for the entire property. The appraiser retained by the Jacksons valued the Parcel at \$429,000 for a partial take and \$510,000 for the entire property.

After further discussion, the parties reached an agreement where the County would convey the 1.28 acre adjacent parcel (Parcel 111) to the Jacksons and the sum of \$210,000 for the needed 0.47 acre right-of-way parcel (Parcel 110). The conditions of the sale are as follows:

1. The County (or its contractor) will construct an 18' driveway to the remainder Parcel 110.
2. The Jacksons will assume all risks of any drainage issues on Parcels 110 and 111 that may occur as a result of the 66th Avenue improvement project.

These conditions were approved by the Public Works Director.

Due to the close proximity of the new right-of-way line to the front of the house (about 10 feet), most eminent domain appraisers would deem the house a total loss. In arriving at the settlement amount, staff reasoned that its own appraiser deemed the value of the whole parcel to be \$145,000 and that the resale value of the adjacent property would be compromised by its smaller size for the area (less than 5 acres), making it most valuable to adjacent property owners like the Jacksons.

The Jacksons sought appraisal, engineering and land planning fees in the amount of \$22,632.50 which was negotiated downward to \$20,000 and attorney's fees pursuant to the eminent domain statute of 33% of the benefit gained for the client ($\$210,000 - \$45,000 = \$165,000 \times 0.33 = \$54,450$), making the total cost to purchase \$284,450. In the interest of settlement, Mr. Holloway agreed to waive any right to attorney's fees associated with the non-monetary benefits obtained as a result of acquiring the adjacent property and the driveway listed as a condition of the sale.

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 parties. Pursuant to eminent domain statutes, the County is responsible for paying reasonable expert witness fees

incurred by both parties. As noted in the past, expert witness fees for both parties often exceed \$100,000 by the time the suit is filed, depositions of the experts are taken and mediation is held. The County has achieved significant savings in this case 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 mediation conference, the parties entered into a Pre-Suit Mediation Settlement Agreement which is attached as Exhibit "D".

FUNDING: Funding for this acquisition is budgeted and available from Traffic Impact Fees/District I/ROW/66th Ave-65th Street -85th Street- Acct#10215141-066120-16009.

STAFF RECOMMENDATION: Staff recommends the Board approve conveying the adjacent property to the Jacksons, approve the mediation agreement to purchase the 0.47 acre Jackson property for \$210,000 with the stated conditions, approve costs incurred by the Jacksons of \$20,000 and approve the settlement of attorney's fees of \$54,450 and authorize the Chairman to execute the Pre-Suit Mediation Settlement Agreement on behalf of the Board.

Attachments: Exhibit "A" Aerial Photo
Exhibit "B" sketch and legal description of the right-of-way
Exhibit "C" Aerial photo of the adjacent property
Exhibit "D" Pre-Suit Mediation Settlement Agreement

Copies to: David Holloway, Esq.