



Office of

Attorney's Matters 10/13/2020

**INDIAN RIVER COUNTY
ATTORNEY**

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

MEMORANDUM

TO: The Board of County Commissioners

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

FROM: Susan J. Prado, Assistant County Attorney

DATE: October 5, 2020

SUBJECT: Acquisition of Right-Of-Way for Phase II of 66th Avenue Improvements – Kinchen - 66th Avenue, Parcel 124-A

Marvin Kenneth Kinchen and Marsha A. Kinchen (hereinafter “Kinchens”) are the owners of the parcel of property at 7615 66th Avenue, Vero Beach, Florida 32967, depicted on the aerial attached to this memorandum as Exhibit “A”. The parcel is a 38.6’ by 185’ lot approximating 0.16 acres directly abutting the west side of 66th Avenue. The parent tract is 0.84 acres in size, zoned A-1, Agricultural, up to one residential unit per five acres, and lies outside of the Urban Services Boundary. The parent tract is a legal non-conforming property. The site is a former citrus grove, and currently a single family home is located upon the site. This house is the homestead property of the Kinchens and is not within the area of take, however improvements consisting of a chain-link fence, gravel driveway, two (2) bottle brush trees, one (1) avocado tree, and one (1) powder puff tree are within the area of take.

Construction plans call for the County to acquire the following from the Kinchens:

- Parcel 124-A which is made up of 0.16 acres of right-of-way consisting of a 38.6’ x 185’ wide strip along the entire length of the eastern border of the 0.84 acre parcel.

The County’s appraisal for Parcel 124-A was performed by Armfield & Wagner. The appraisal assigned Parcel 124-A a value of \$12,000. The appraisal did not find any severance damages.

The Kinchens and their attorney negotiated with Bill DeBraal and Susan Prado on the sale of the piece of right-of-way. Staff and the Kinchens agreed on the terms of the Agreement for Purchase and Sale of Real Estate that is attached to this memorandum as Exhibit "B". The Agreement terms are:

- The County will pay to the Kinchens \$27,000 for right-of-way parcel 124-A, permanent access easement, and temporary construction easement;
- Statutory attorney's fees of \$5,346;
- Appraisal fees \$2,900; and
- Kinchens' engineering analysis fees \$3,192.

The total settlement cost to the County is \$38,438.

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 the Kinchens. 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 for the Kinchens. The County has incurred significant savings by not having to hire our trial witnesses (appraiser, engineer and land planner) and outside counsel.

The Kinchens are represented by Raymer F. Maguire, III of the law firm Maguire, Lassman, and Silbernagel, P.A. in Orlando.

FUNDING: Funding is budgeted and available for this expenditure in Traffic Impact Fees/District I/ROW/66th Ave/69th Street-85th Street, Account # 10215141-066120-16009.

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

Attachments: Exhibit "A" An aerial image of Parcel 124-A.
Exhibit "B" Agreement to Purchase and Sell Real Estate for right-of-way Parcel 124-A.