

8  
7265

37

Public Records of  
St. Johns County, FL  
Clerk# 02-017830  
O.R. 1736 PG 442  
02:16PM 03/26/2002  
REC \$33.00 SUR \$4.50

**RESOLUTION NO. 2002-30**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE CLERK OF COURTS TO FILE THE SURVEY MAP OF OWENS AVENUE LYING IN THE BIERA MAR SUBDIVISION CLAIMING A VESTED INTEREST IN ST. JOHNS COUNTY IN THE RIGHT-OF-WAY DESCRIBED IN THIS SURVEY BY PRESCRIPTIVE RIGHTS OF THE PUBLIC PER CASE LAW BERGER VS. CITY OF CORAL GABLES 101 SO. 2d 396 (FLA. DIST. CT. APP.-3d DIST. 1958)**

**WHEREAS,** the filing of the survey map with the Clerk of the Courts, the right-of-way as shown in this survey will be vested in St. Johns County, a political subdivision of the State of Florida by prescriptive rights of the public, per case law, Berger vs City of Coral Gable 101 So.2d 396 (Fla. Dist. Ct. App.-3d Dist. 1958), copy attached hereto and made a part hereof as Exhibit "A"; and

**WHEREAS,** Owens Avenue, as described and shown on the map, Exhibit "B", attached hereto and made a part hereof is considered to be a County road; and

**WHEREAS,** the public has been continuously using Owens Avenue without permission of the underlying land owners and Road and Bridge Supervisor, Johnny Newsome, has stated in a memo that the County has been responsible for maintaining Owens Avenue for the last 20 years and the public has continually used the road during that time, copy attached hereto and made a part hereof as Exhibit "C"; and

**WHEREAS,** it is in the best interest of St. Johns County to acquire ownership of Owens Avenue that will benefit the citizens of St. Johns County.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:**

Section 1. All the above recitals are findings of fact.

Section 2. The Chair of the Board of County Commissioners and the Clerk of the Courts are hereby authorized to file the attached survey map of Owens in the Public Records of St. Johns County, Florida.

Section 3. The Clerk is instructed to record this Resolution in the Public Records of St. Johns County, Florida.

*Jackel P. Bernard  
- Bill Co -*

PASSED AND ADOPTED, this 5<sup>th</sup> day of March, 2002.

**BOARD OF COUNTY COMMISSIONERS  
ST. JOHNS COUNTY, FLORIDA.**

By: Marc A. Jacalone  
Marc A. Jacalone, Chairman

ATTEST: Cheryl Strickland, Clerk

*Rendition date: 3/7/2002*

Patricia S. Platt  
Deputy Clerk



## EXHIBIT "A" TO RESOLUTION

101 So. 2d 396, \*; 1958 Fla. App. LEXIS 2691, \*\*

Dora BERGER, Appellant, v. The CITY OF CORAL GABLES, Florida, a municipal corporation organized and existing under the laws of the State of Florida, and Dade County, a political subdivision of the State of Florida, Appellees.

No. 57-323.

District Court of Appeal of Florida, Third District.

101 So. 2d 396; 1958 Fla. App. LEXIS 2691

March 6, 1958.

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Plaintiff grantee appealed the final decree of the Circuit Court for Dade County (Florida), which dismissed her suit to enjoin the public's continued use of a street.

**OVERVIEW:** Plaintiff grantee claimed to have title to the street in question because a tax deed purported to convey the property to plaintiff's son, who conveyed it to her. However, the tax deed and conveyance was based on a plat that did not place the street in its correct location. Plaintiff filed a suit to enjoin defendant city from continued use of the city street on the basis that title belonged to her. Uncontroverted testimony established that the property had been continuously used as a public street for 36 years. The circuit court dismissed plaintiff's suit. On appeal, plaintiff argued that the tax deed was prima facie evidence of title and that she took title free of any easements previously encumbering the land. The court stated that an easement by prescription was acquired when land was used by the public for a period of 20 years. The court thought that the established, published easement took priority over the tax deed that plaintiff relied upon, especially because the deed stated that it was subject to existing easements.

**OUTCOME:** The court affirmed the dismissal of plaintiff grantee's suit to enjoin the public's use of a street because the public had acquired an easement by prescription that took priority over the tax deed that purported to grant title to plaintiff.

**CORE TERMS:** plat, street, easement, deed, grantee, tax deed, recorded, designated, dedication, discloses

**CORE CONCEPTS - Hide Concepts**

Real Property Law : Estates, Titles & Rights : Easements & Rights of Way  
 Governments & Legislation : Local Governments : Public Improvements & Services  
 Where land is used as a highway by the general public for a period of 20 years, the public acquires an easement to the same by prescription and a dedication of the land for such use is unnecessary.

**COUNSEL: [\*\*1]**

Samuel B. Berger, Miami, for appellant.

Edward Semple, Miami, for City of Coral Gables.

Darrey A. Davis, Miami, for Dade County.

**OPINION BY:** CARROLL

**OPINION:** [\*396] CARROLL, CHAS., Chief Judge.

This is an appeal from a final decree of the Circuit Court for Dade County, dismissing a suit to enjoin the continued use of a city street, title to which was claimed by the plaintiff-appellant.

The record on appeal discloses that the second amended plat of Cocoaplum Heights, recorded May 24, 1911, in Plat Book 1, at page 73 of the Public Records of Dade County, Florida, showed an unnamed 40 foot street. There was no dedication thereof. Uncontroverted testimony established that such property had been a roadway since 1915, and had been used continuously as a public street since then. On April 15, 1926, Coral Gables Corporation filed a plat designated as Coral Gables, Biscayne Bay Section, Part One, Plat E, which was recorded in Plat Book 25, at page 53. That 1926 plat showed a street designated as "Avenue Saldano", which appears to have been intended to be the street area involved here. However, through an error, the 1926 plat did not place the existing street where it actually [\*\*2] was shown and located on the 1911 plat.

The record further discloses that on August 16, 1950, a plat of the F. H. Dunbar Tract was filed and recorded in Plat Book 51, at page 45. This 1950 plat showed the correct location of the street in question, as it had been shown originally on the 1911 plat.

Meanwhile, the tax assessors had used the 1926 plat as a basis for improper assessment of taxes on the actual street area. On the assumption that it had acquired title thereto through delinquency in such taxes, the Everglades Drainage District executed a deed (under Section 298.46, Fla.Stat., F.S.A., on April 27, 1951) to Samuel B. Berger, purporting to convey the property according to the erroneous 1926 plat. Appellant claims as grantee of the said Samuel B. Berger, who is her son.

[\*397] Appellant raises two questions as follows:

1. Where the Trustees of Internal Improvement Fund or the Board of Commissioners of the Everglades Drainage District issue a tax deed, does it constitute prima facie evidence of title in the grantee?
2. Does a grantee of a tax deed take the title free of any easements previously encumbering the land?

It is settled in this state that where [\*\*3] land has been used as a highway by the general public for a period of twenty years, the public acquires an easement to the same by prescription and a dedication of the land for such use is unnecessary. *Zetrouer v. Zetrouer*, 89 Fla. 253, 103 So. 625; *Couture v. Dade County*, 93 Fla. 342, 112 So. 75; *Dade County v. Snyder*, 140 Fla. 135, 191 So. 185; *Downing v. Bird*, Fla. 1958, 100 So.2d 57; 17A Am.Jur., *Easements*, § 66, page 677.

The record shows that the parcel in question has been the subject of public user for street purposes for more than thirty-six years. After having appeared as such on the 1911 plat, its use for street purposes continued after 1926 in spite of the fact that the 1926 Coral Gables plat was inaccurate and did not show the true location of the street.

Aside from other reasons, the established public easement takes priority over the tax deed on which appellant relies, because the deed was made subject to easements. The deed recited on its face that the conveyance is "Subject to all easements existing on the date of this deed."

The defendant Dade County claims no right in the street, and is interested only in seeing it maintained as a city street because it [\*\*4] furnishes access to a county thoroughfare.

The action of the chancellor in dismissing the cause with prejudice on final hearing was without error.

Affirmed.

HORTON and PEARSON, JJ., concur.

Service: LEXSEE®

Citation: 101 So.2d 396

View: Full

Date/Time: Wednesday, February 28, 2001 - 9:43 AM EST

---

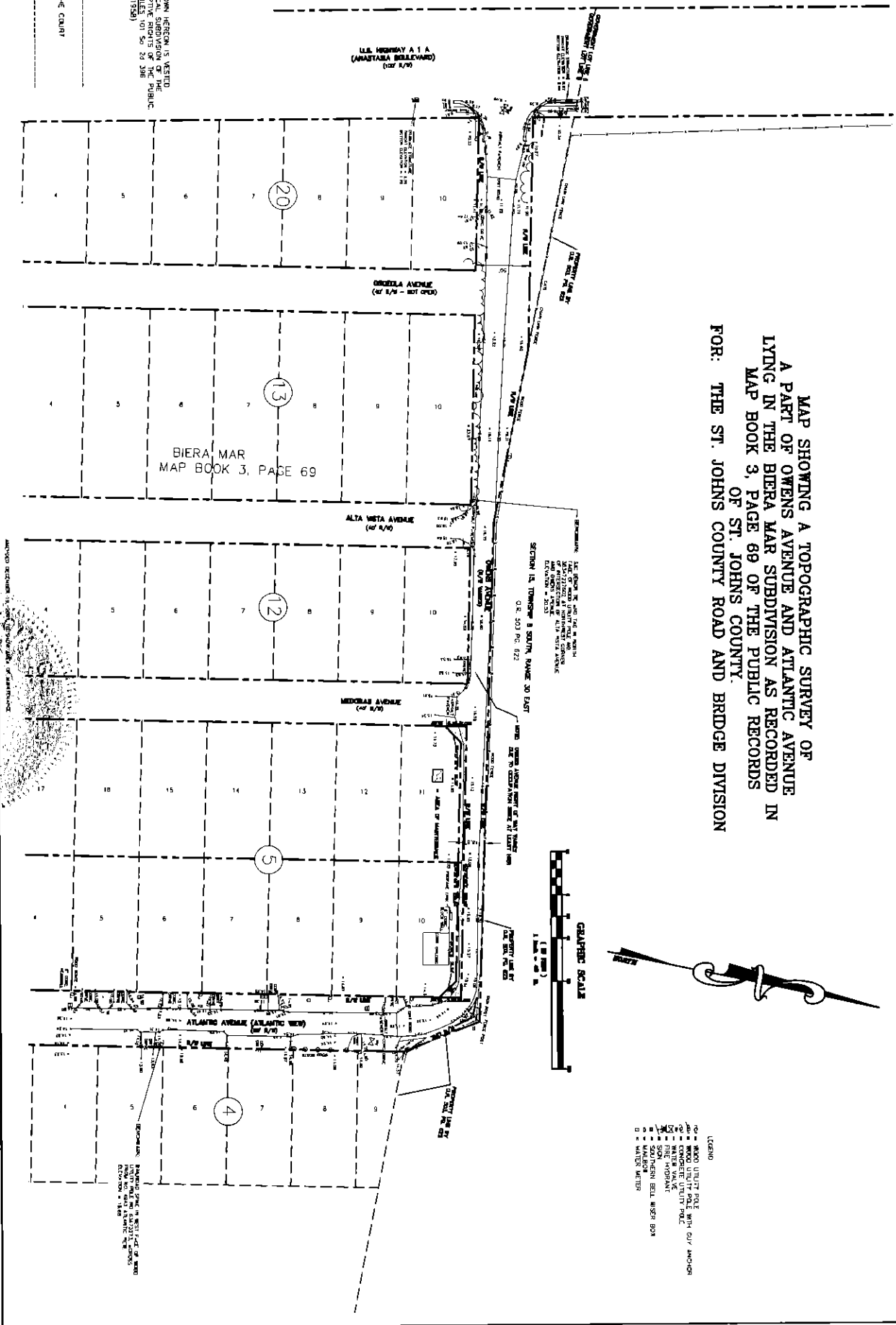
[About LEXIS-NEXIS | Terms and Conditions](#)

---

Copyright © 2001 LEXIS-NEXIS Group. All rights reserved.

MAP SHOWING A TOPOGRAPHIC SURVEY OF  
 A PART OF OWENS AVENUE AND ATLANTIC AVENUE  
 LYING IN THE BIERA MAR SUBDIVISION AS RECORDED IN  
 MAP BOOK 3, PAGE 69 OF THE PUBLIC RECORDS  
 OF ST. JOHNS COUNTY.

FOR: THE ST. JOHNS COUNTY ROAD AND BRIDGE DIVISION



- LEGEND
- 3000 UNIT POLE
  - 4000 UNIT POLE WITH GUY ANCHOR
  - CONCRETE UTILITY POLE
  - WIRE
  - FIRE HYDRANT
  - SIGN
  - SONNENSHEN BELL W/SH 90°
  - WAREHOUSE
  - WALKER WELLS

IT IS HEREBY CERTIFIED THAT:  
 THE AREA OF MAINTENANCE SHOWN HEREON IS SITED  
 IN ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE  
 STATE OF FLORIDA, BY PREScriptive RIGHTS OF THE PUBLIC  
 (FLA. STAT. ANN. § 101.35, 23, 24)  
 ST. JOHNS COUNTY BOARD OF  
 COUNTY COMMISSIONERS

CHAIR  
 ST. JOHNS COUNTY CLERK OF THE COURT  
 CLERK

ST. JOHNS COUNTY PUBLIC WORKS DEPARTMENT  
 SURVEYING AND MAPPING/GIS DIVISION  
 1000 LAYNE SPRINGWAY - P.O. BOX 540  
 ST. AUGUSTINE, FLORIDA 32084  
 PHONE (904) 825-2400 FAX - 2400

OWENS AVENUE  
 TOPOGRAPHIC SURVEY  
 FILE NUMBER: S-208

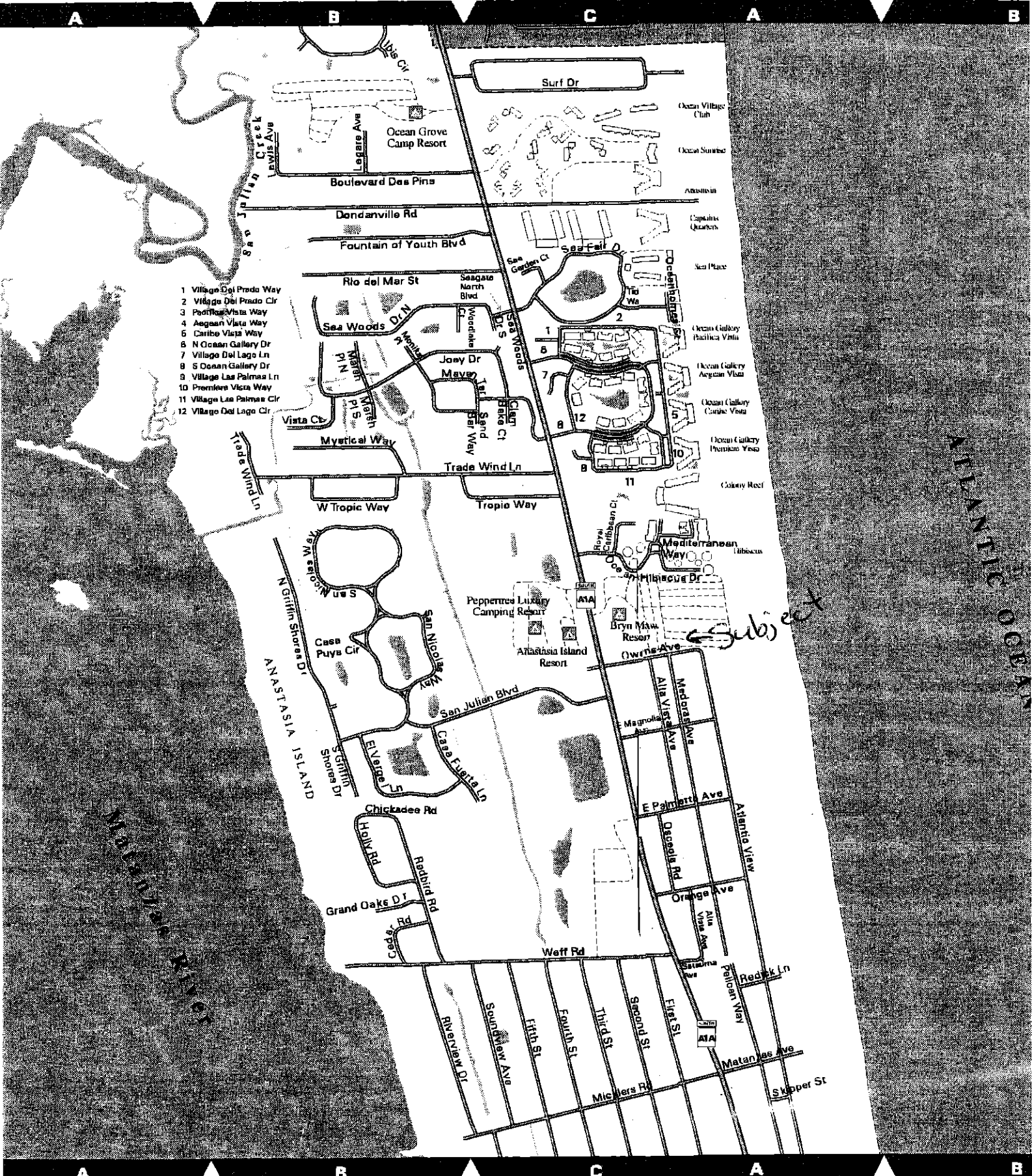
DATE: 10/14/11

PROJECT NO.: 11-03  
 FIELD BOOK NO.: 14  
 FIELD DATE: 10/14/11

DRAWN BY: A.J.B.  
 CHECKED BY: P.S.B.  
 CADD NAME: P.S.B.  
 PROJECT NO.: 11-03  
 FIELD BOOK NO.: 14  
 FIELD DATE: 10/14/11

ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

See Page 1125




See Page 1140

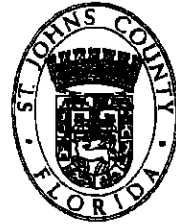
Pa

See Page

## EXHIBIT "C" TO RESOLUTION

## MEMORANDUM

TO: Gail Oliver, Surveying Department  
FROM: Johnny Newsome, Road & Bridge Supervisor   
DATE: February 21, 2002  
SUBJECT: Owens Avenue Maintenance



Speaking for the last 20 years it has been the County's responsibility to maintain Owens Avenue and the public has continually used the road during that time. This includes digging ditches, road grading and stabilization. Approximately 200 to 300 loads of material have been used in the stabilization of this road.

Please call this office with any further questions you may have.

A large, stylized handwritten signature of Johnny Newsome in cursive script.