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Public Records of
St. Johns County, FL
Clerk# 02-019629
O.R. 1740 PG 1455
03:36PM 04/03/2002
REC \$41.00 SUR \$5.50

RESOLUTION NO. 2002- 48

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE CLERK OF COURTS TO FILE THE SURVEY MAP OF NORTH FRANCIS ROAD 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, North Francis Road, 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 North Francis Road without permission of the underlying land owners and Road and Bridge Supervisor, Harold Cooper, has executed an affidavit that the County has been responsible for maintaining North Francis Road for the last 30 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 North Francis Road 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 North Francis Road 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.

David P. ...
Bill ...

PASSED AND ADOPTED, this 26th day of March, 2002.

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

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

ATTEST: Cheryl Strickland, Clerk

Patricia DeGrande
Deputy Clerk

RENDITION DATE 3-28-02



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 Coccolupum 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, 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 recites 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, II., concur.

Service: LEXIS®

Citation: 101 So.2d 396

View: Full

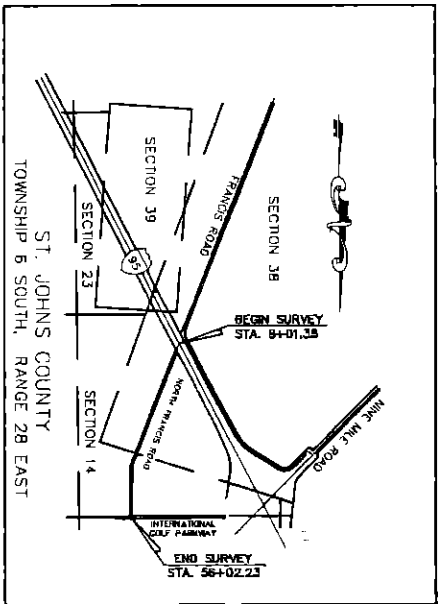
Date/Time: Wednesday, February 28, 2001 - 9:43 AM EST

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MAPS OF THE
COUNTY HIGHWAY
MAINTENANCE MAP

NORTH FRANCIS ROAD
ST. JOHNS COUNTY, FLORIDA
VICINITY MAP



LEGEND table with columns for symbols and descriptions for items like AERIAL PHOTO, CONCRETE CURB, ROAD, etc.

GENERAL NOTES

- List of 10 general notes regarding survey accuracy, monumentation, and data sources.

SURVEYOR'S CERTIFICATION

The survey was performed in the public interest... and in accordance with the provisions of Chapter 35, F.S. (FS-28) Subchapter (1).

NORTH FRANCIS ROAD has been "yield" in the County in... St. Johns County Board of County Commissioners

Board Chair:

St. Johns County Clerk of Courts

INDEX OF SHEETS
SHEET NO. SHEET DESCRIPTION
1 COUNTY SHEET
2 KEY MAP
3-4 DETAIL SHEETS

MAINTENANCE MAP
COUNTY OF ST. JOHNS
RIGHT OF WAY MAPPING

MAINTAINED RIGHT-OF-WAY TABULATION
TABLE with columns: STATION, TYPE, DATE ESTABLISHED BY, REMARKS

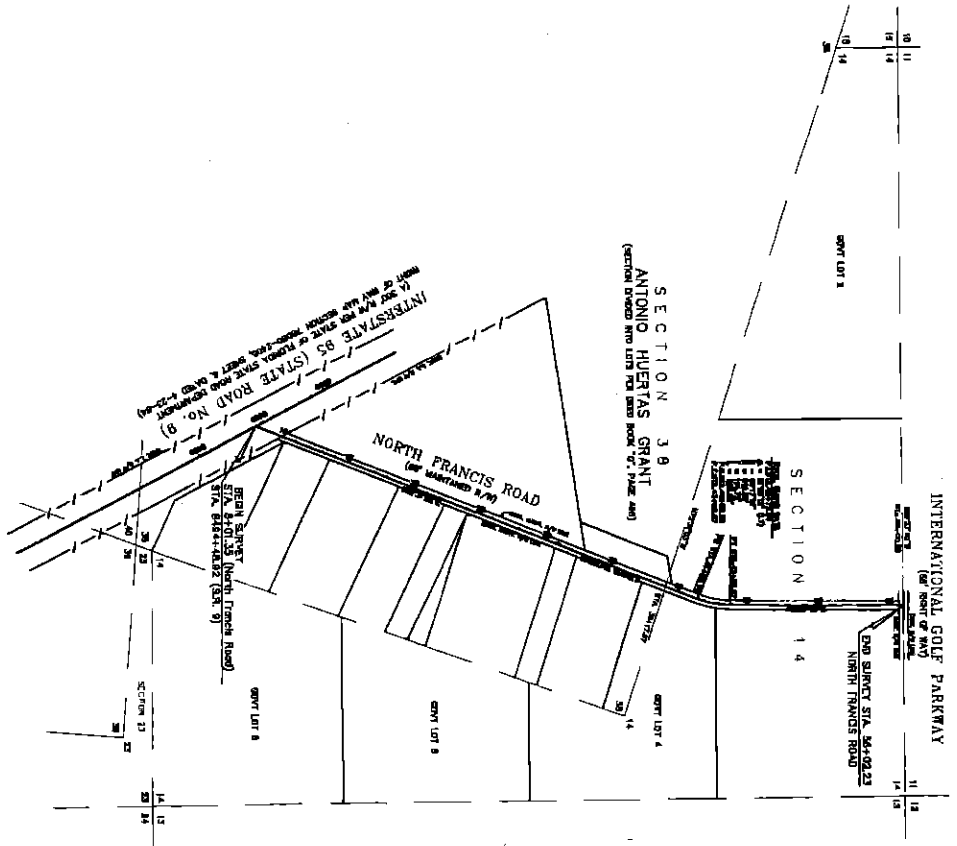
COORDINATE DATA

Table with columns: STATION, NAD83, NAD83, NAD83, NAD83

Clary & Associates, Inc.
PROFESSIONAL LAND SURVEYORS
COVER SHEET
NORTH FRANCIS ROAD
FROM SR. 9 (0-95) TO INTERNATIONAL GOLF PARKWAY

ST. JOHNS COUNTY
COUNTY PROJECT NO. 01/A
ST. JOHNS COUNTY

SECTIONS 14 & 38 (ANTONIO HUERTAS GRANT)
 TOWNSHIP 6 SOUTH, RANGE 28 EAST
 ST. JOHNS COUNTY, FLORIDA



MAINTENANCE MAP

COUNTY OF ST. JOHNS
 RIGHT OF WAY MAPPING

NOTE: REFER TO SHEET 1 OF 4 FOR LEGEND AND GENERAL NOTES.

SYMBOL	DESCRIPTION
[Symbol]	EXISTING RIGHT OF WAY
[Symbol]	PROPOSED RIGHT OF WAY
[Symbol]	EXISTING EASEMENT
[Symbol]	PROPOSED EASEMENT
[Symbol]	EXISTING ROAD
[Symbol]	PROPOSED ROAD
[Symbol]	EXISTING UTILITY
[Symbol]	PROPOSED UTILITY
[Symbol]	EXISTING FENCE
[Symbol]	PROPOSED FENCE
[Symbol]	EXISTING SURVEY
[Symbol]	PROPOSED SURVEY

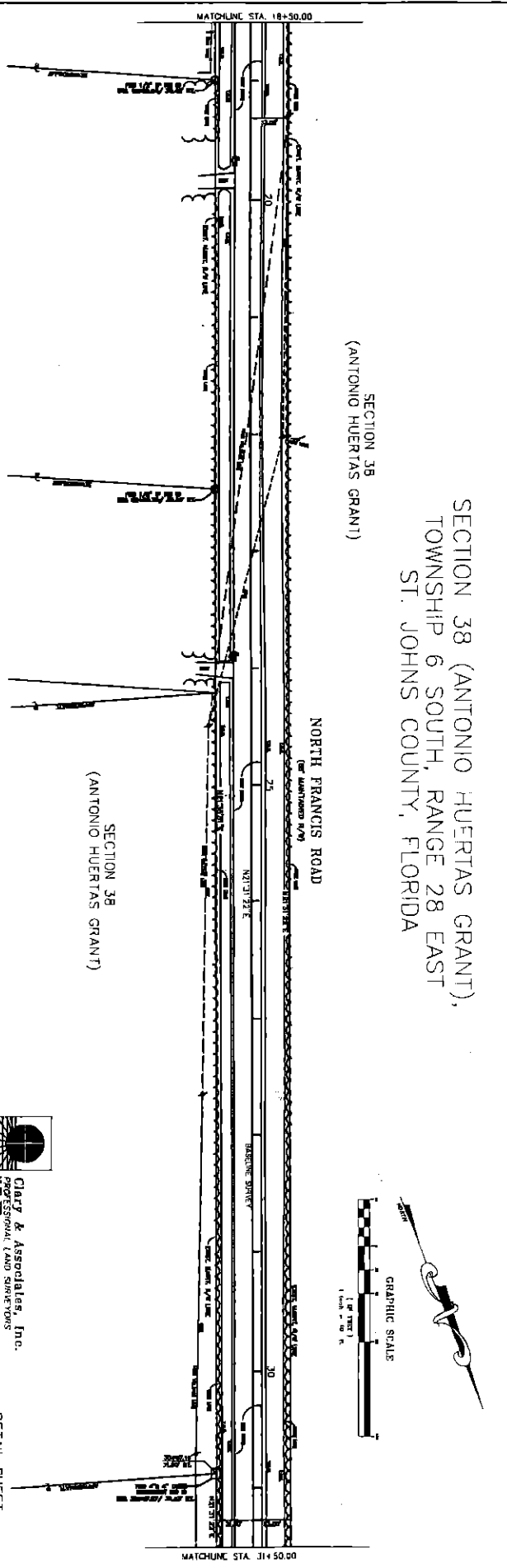
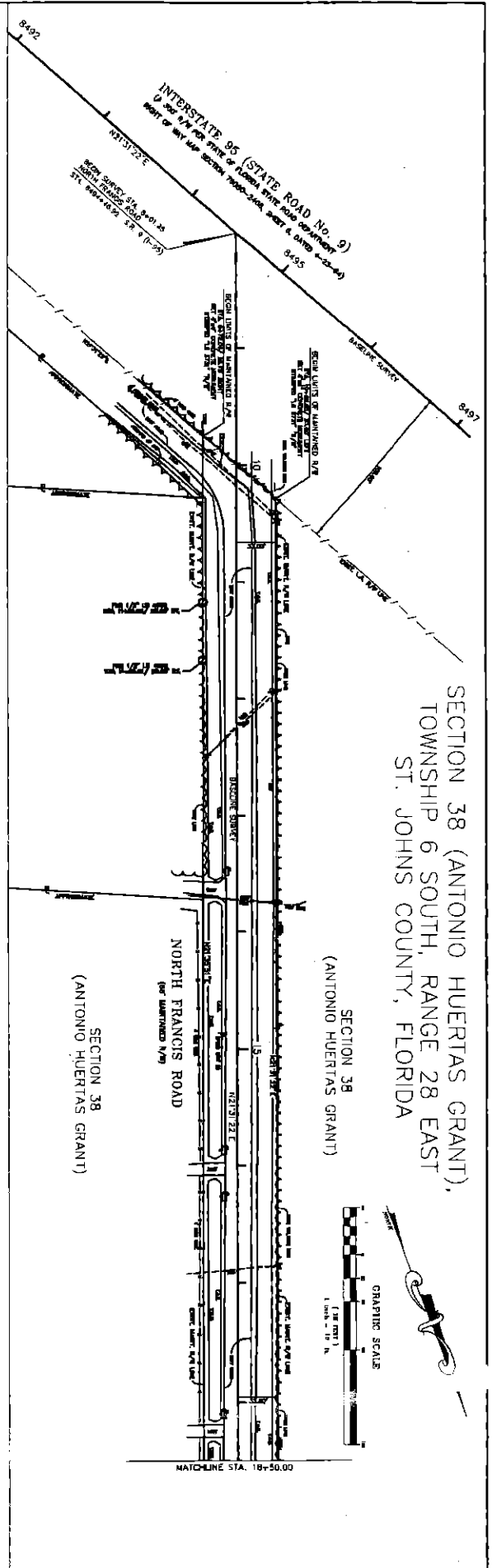
NOTE: REFER TO SHEET 1 OF 4 FOR LEGEND AND GENERAL NOTES.



Clariv & Associates, Inc.
 PROFESSIONAL LAND SURVEYORS

COUNTY PROJECT NO. N/A
 NORTH FRANCIS ROAD
 ST. JOHNS COUNTY

KEY MAP
 NORTH FRANCIS ROAD
 FROM S.M. 3 (1-85) TO INTERNATIONAL GOLF PARKWAY
 DATE PREPARED BY: J.S.D. BROS. NOV. 5
 DRAWN BY: J.S.D. BROS. NOV. 5
 SCALE: 1" = 200'
 SHEET 1 OF 4



MAINTENANCE MAP

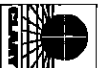
COUNTY OF ST. JOHNS
RIGHT OF WAY MAPPING

APPROVED BY

DATE

NO.	DESCRIPTION	DATE
1	ISSUED	11/11/11
2	REVISED	11/11/11
3	REVISED	11/11/11
4	REVISED	11/11/11
5	REVISED	11/11/11

NOTE: REFER TO SHEET 1 OF 4 FOR LEGEND AND GENERAL NOTES.

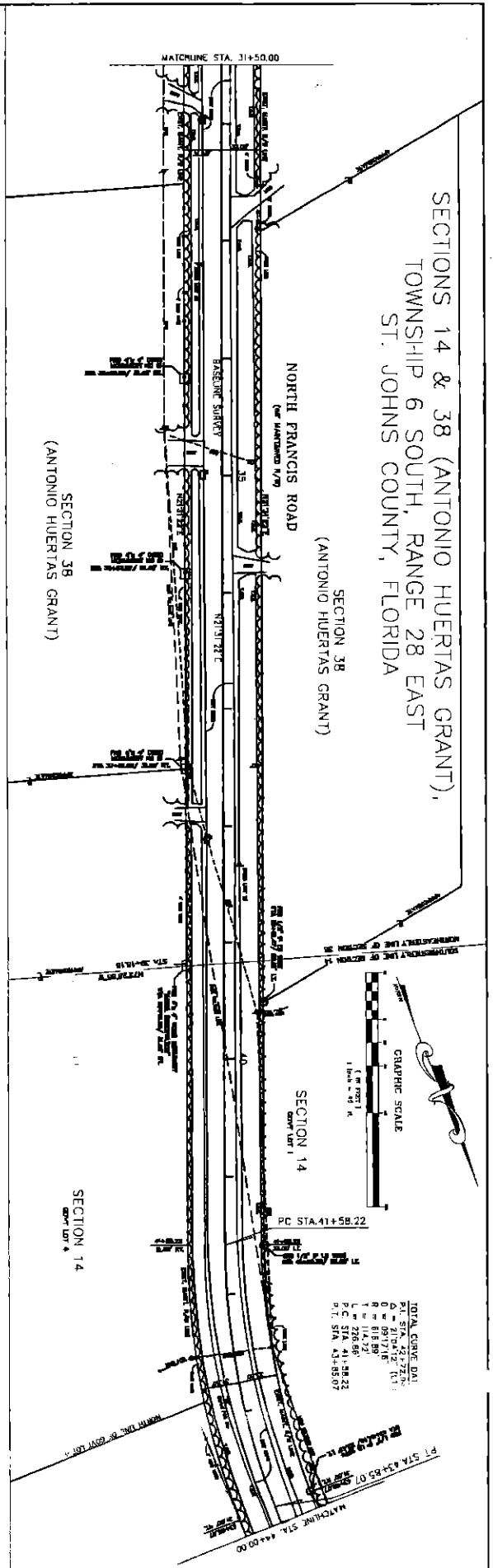


Clary & Associates, Inc.
PROFESSIONAL LAND SURVEYORS

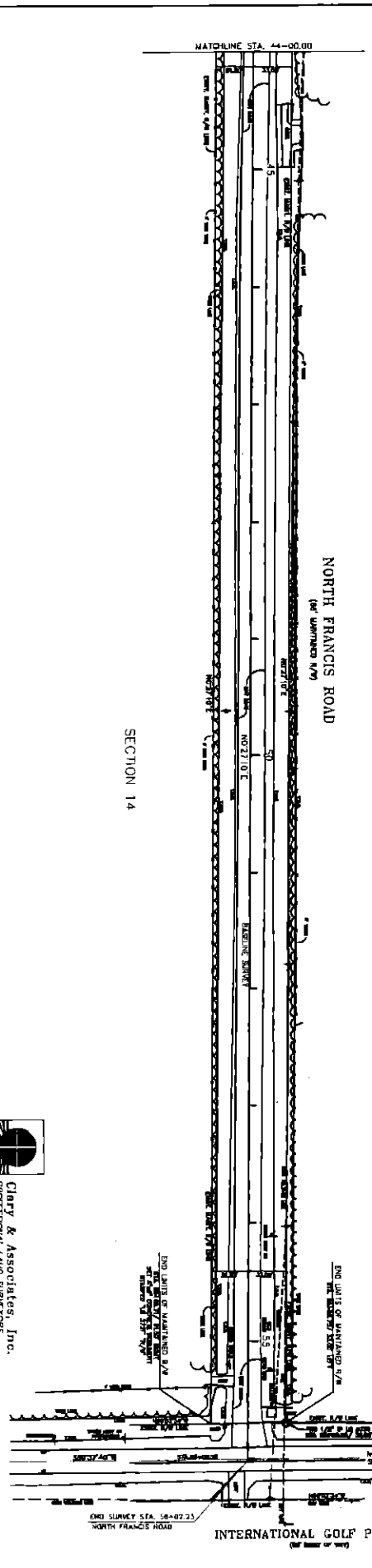
COUNTY PROJECT NO. N/A
ST. JOHNS COUNTY

ROAD PROJECT NO. 11-001
CLARY & ASSOCIATES, INC.
DATE OF SURVEY: 11/11/11
SCALE: 1" = 40'
SHEET 3 OF 4

DETAIL SHEET



SECTION 14, TOWNSHIP 6 SOUTH, RANGE 28 EAST
ST. JOHNS COUNTY, FLORIDA



MAINTENANCE MAP

COUNTY OF ST. JOHNS
RIGHT OF WAY MAPPING

APPROVED BY: _____ DATE: _____

NOTE: REFER TO SHEET 1 OF 4 FOR LEGEND AND GENERAL NOTES.

NO.	DATE	BY	REVISION

Clary & Associates, Inc.
PROFESSIONAL LAND SURVEYORS

PROJECT NO. W/A
ST. JOHNS COUNTY
SECTION N/A

SCALE: 1" = 40'
SHEET 4 OF 4

EXHIBIT "C" TO RESOLUTION

AFFIDAVIT

STATE OF FLORIDA
 COUNTY OF ST. JOHNS

On this day before me, the undersigned authority, personally appeared **HAROLD COOPER**, Road and Bridge Supervisor, who being first by me duly sworn, deposes and says that the County has been maintaining **North Francis Road** for the last 30 years and the public has continuously used the road during this time. This maintenance includes digging ditches, road grading and stabilization.

FURTHER AFFIANT SAYETH NAUGHT.

Harold Cooper

 HAROLD COOPER

STATE OF FLORIDA
 COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 14th day of March 2002, by **HAROLD COOPER**, Road and Bridge Supervisor, who is personally known to me.

Debbie Taylor

 Notary



Debbie Taylor
 Commission # CC 913963
 Expires April 14, 2004
 Bonded Thru
 Atlantic Bonding Co., Inc