

RESOLUTION NO. 2002-71

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE CLERK OF COURTS TO FILE THE SURVEY MAP OF LUTHER BECK ROAD AND BYRD ROAD 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**, Luther Beck Road and Byrd Road, as described and shown on the map, Exhibit "B", attached hereto and made a part hereof are two roads considered to be County roads; and

**WHEREAS**, the public has been continuously using Luther Beck Road and Bryd Road 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 Luther Beck Road and Byrd Road for the last 25 years, copy attached hereto and made a part hereof as Exhibit "C" and Exhibit "D"; and

**WHEREAS**, the Board of County Commissioners in Resolution No. 88-73 established a list of roads long considered to be County Roads with little or no documentation of record County ownership and have instructed staff to obtain documentation in order to document justification for continued County maintenance of said roads; and

**WHEREAS**, it is in the best interest of St. Johns County to acquire ownership of Luther Beck Road and Byrd Road that will benefit the citizens of St. Johns County.

*Jackie P. DeGrand  
BCC Secy  
Bill Co -*

**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 finds 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 Luther Beck Road and Byrd 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.

**PASSED AND ADOPTED, this** 7<sup>th</sup> **day of** May, 2002.

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

By: James E. Bryant  
James E. Bryant, Chairman

**ATTEST: Cheryl Strickland, Clerk**

Christina LeGrande  
Deputy Clerk

RENDITION DATE 5-9-02



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 Cocoplum 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 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, JJ., concur.

Service: LEXIS®  
Citation: 101 So.2d 396  
View: Full  
Date/Time: Wednesday, February 28, 2001 - 9:43 AM EST

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BYRD ROAD AND A PORTION OF LUTHER BECK ROAD HAS BEEN VESTED IN THE COUNTY IN ACCORDANCE WITH CHAPTER 95, F.S. (95.16) AS BY CERTIFIED BY:  
 ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS ST. JOHNS COUNTY CLERK OF COURTS

MAP SHOWING A SPECIFIC PURPOSE SURVEY OF  
 A MAINTENANCE MAP FOR A PORTION OF LUTHER BECK ROAD AND BYRD ROAD, A  
 PORTION OF SECTIONS 33 AND 34, TOWNSHIP 9 SOUTH, RANGE 28 EAST, ST. JOHNS  
 COUNTY, FLORIDA.

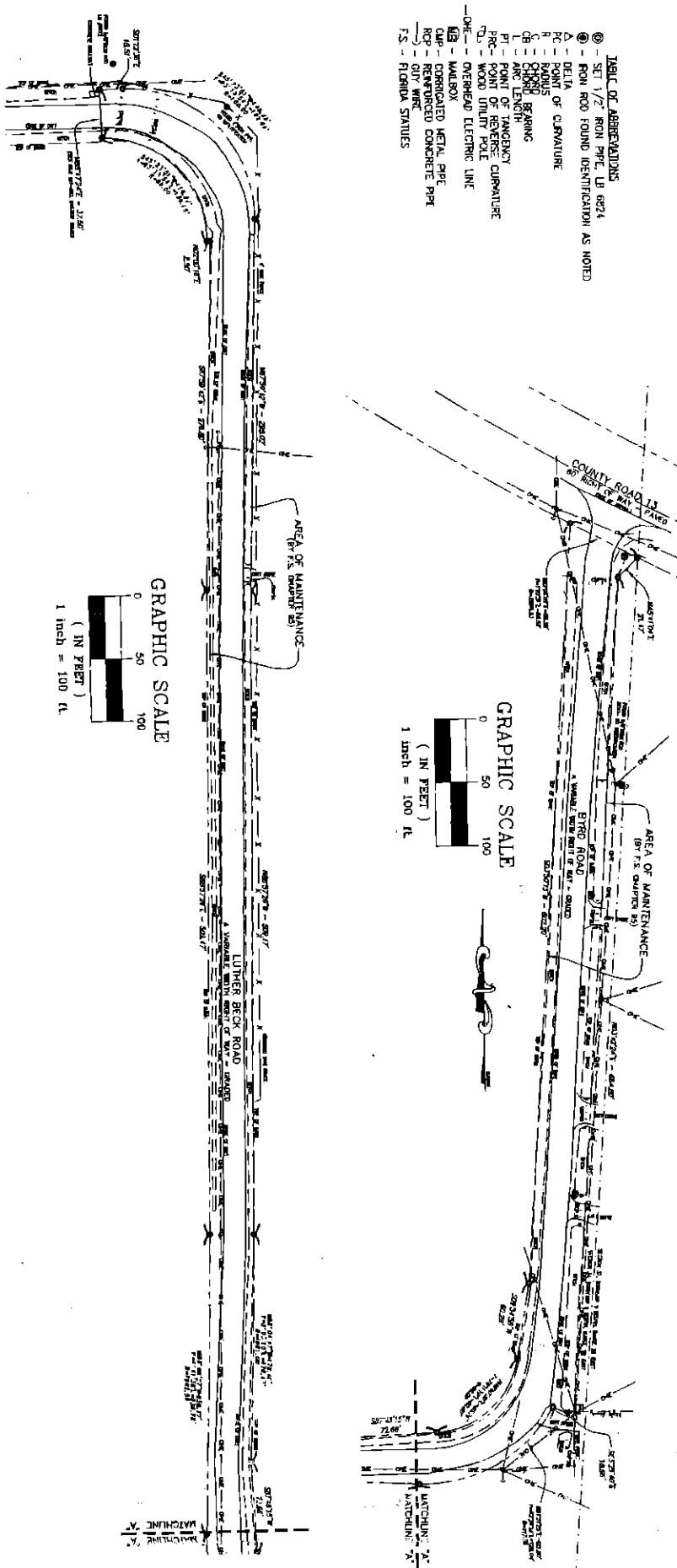
BOARD CHAIR

CLERK

ROAD PLAT BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

- TABLE OF ABBREVIATIONS**
- ① - SET 1/2" IRON PIPE, LB 6824
  - ② - IRON ROD FOUND IDENTIFICATION AS NOTED
  - Δ - DELTA
  - PC - POINT OF CURVATURE
  - R - RADIUS
  - CB - CHORD BEARING
  - CB - CHORD BEARING
  - PI - POINT OF INTERSECTION
  - PRC - POINT OF REVERSE CURVATURE
  - CU - CURVATURE
  - OW - OVERHEAD ELECTRIC LINE
  - MB - MAILBOX
  - CMF - CORRUGATED METAL PIPE
  - RCF - REINFORCED CONCRETE PIPE
  - SM - SURVEY MARK
  - F.S. - FLORIDA STATUTES

EXHIBIT "B" TO RESOLUTION



- GENERAL NOTES:**
1. BEARINGS ARE BASED ON THE SOUTHERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 13 AS BEING N88°16'00"W.
  2. THIS IS A SPECIFIC PURPOSE SURVEY ONLY AND DOES NOT PURPORT ANY WETLAND JURISDICTION OF ANY FEDERAL, STATE, COUNTY OR LOCAL AGENCY. THE PURPOSE OF THIS SURVEY IS TO ESTABLISH THE MAINTAINED RIGHT-OF-WAY OF BYRD ROAD.
  3. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF ABSTRACT OR TITLE COMMITMENT. THIS COMPANY BEARS NO RESPONSIBILITY TO ANY CLAIMS MADE BY SUCH INSTRUMENTS.
  4. THIS SURVEY IS PREPARED AND CERTIFIED FOR THE EXCLUSIVE USE OF THE CLIENT NAMED HEREON AND IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

I HEREBY CERTIFY, that this map graphically depicts the results of a field survey made under my responsible direction and complies with the latest Florida Professional Standards for Surveyors as promulgated by the Florida State Board of Professional Surveyors and Mapmakers, and that I am duly Licensed Administrative Geodesist No. 171207, Florida Statutes, subject to all rules and regulations therein contained.

FIELD WORK BY: PRELIMINARY  
 DATE OF SIGNATURE: \_\_\_\_\_  
 ALBERT D BRADSHAW, P.E., FLORIDA CERTIFICATION NO. 5251

**PRIVETT-NILES and ASSOCIATES, INC.**  
 SURVEYING AND MAPPING CONSULTANTS  
 LICENSED BUSINESS No. 6824  
 3000 N. PONCE DE LEON BOULEVARD, SUITE "D"  
 ST. AUGUSTINE, FLORIDA 32084  
 (904) 829-2591 FAX: (904) 829-5070

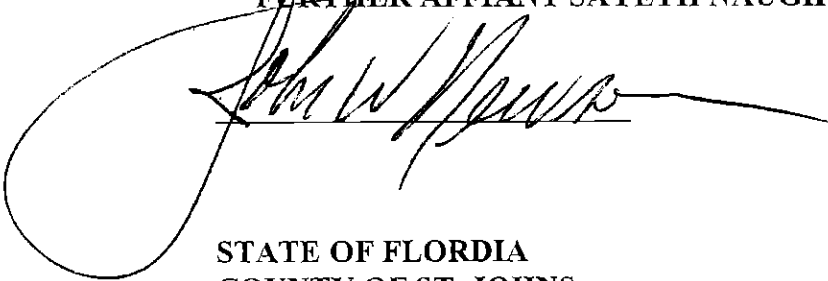
PROJECT #: 101-093 DWG #: 101-093

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

On this day before me, the undersigned authority, personally appeared Johnny Newsome, Road and Bridge Supervisor, who being first by me duly sworn, deposes and says that the County has been maintaining **Luther Beck Road** for the last 25 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.



STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of April 2002, by Johnny Newsome, Road and Bridge Supervisor, who is personally known to me.

Laurie C. Braddock  
Notary



Laurie C. Braddock  
Commission # CC 928860  
Expires April 17, 2004  
Bonded Thru  
Atlantic Bonding Co., Inc.

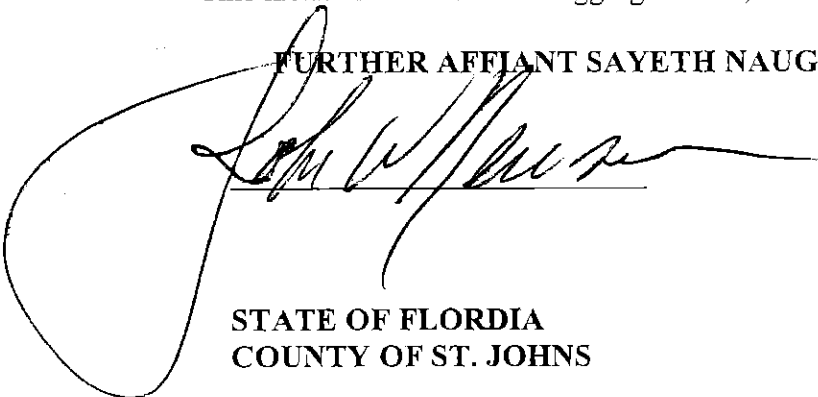
EXHIBIT "D" TO RESOLUTION

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

On this day before me, the undersigned authority, personally appeared Johnny Newsome, Road and Bridge Supervisor, who being first by me duly sworn, deposes and says that the County has been maintaining **Byrd Road** for the last 25 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.



STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of April 2002, by Johnny Newsome, Road and Bridge Supervisor, who is personally known to me.

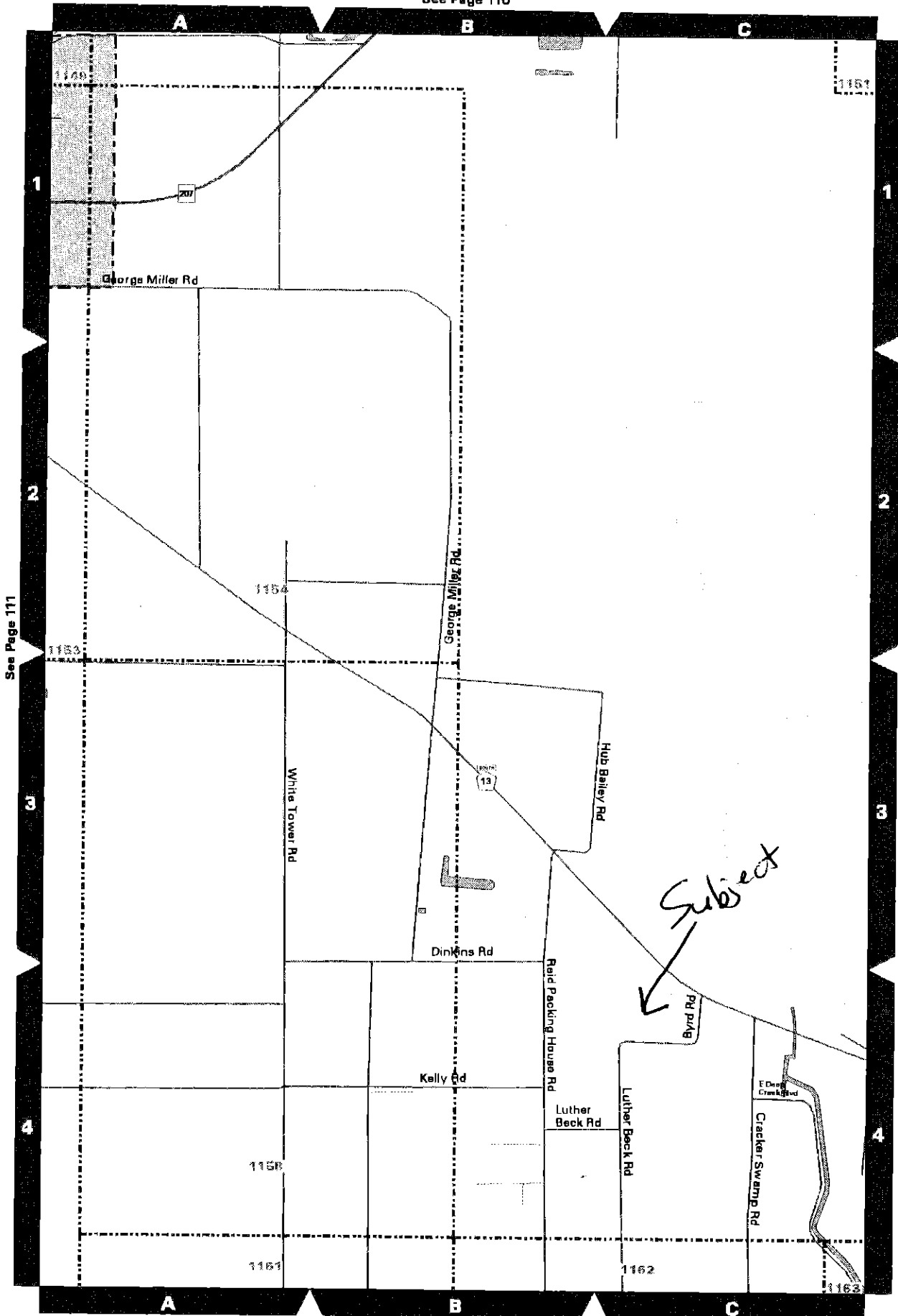
Laurie C. Braddock  
Notary



Laurie C. Braddock  
Commission # CC 928860  
Expires April 17, 2004  
Bonded Through  
Atlantic Bonding Co., Inc



See Page 110



See Page 111