



Office of

Attorney's Matters 02/09/2021

**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
William K. DeBraal, Deputy County Attorney
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MEMORANDUM

TO: The Board of County Commissioners

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

FROM: William K. DeBraal, Deputy County Attorney

DATE: February 3, 2021

SUBJECT: Acquisition of Right-Of-Way from Steve and Terrienne Martin for Phase II of 66th Avenue Improvements - 65th Street west of 66th Avenue, Parcel 304

Steve and Terrienne Martin (the Martins) are the owners of a 9.78 acre parcel of property on the north side of 65th Street, west of 66th Avenue as shown below as *Figure 1*.



Figure 1. Martin property aerial photo

The parcel is zoned A-1, Agricultural, up to one residential unit per five acres and lies outside of the Urban Services Boundary. The site is a former citrus grove and is now used for grazing cattle. Improvements include a gate and fencing around the perimeter of the property.

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

- Parcel 304 which is made up of 0.38 acres of right-of-way consisting of a 50' X 327.53' wide strip along the entire length of the southern border of the 9.78-acre parcel; and
- Inside the area of take there are 14 oak trees, 327 feet of six strand barbed wire fence, a gate and a marl driveway.

Please see the sketch and legal description attached to the Agreement that is included with this memorandum. Other than fencing, gate and trees, the property is unimproved with no structures.

The County's appraisal for Parcel 304 was performed by Armfield & Wagner. The appraisal assigned values as follows:

Parcel 304 0.38 acres @ \$22,550/acre + \$8,000 improvements = \$16,550

The appraisal did not find any severance damages. The appraisal did attach a value of \$8,000 for the trees, gate and fencing that run parallel to 65th Street.

The Martins are represented by their attorney, Mickey Barkett. The Martins' experts evaluated the damages to the part taken as follows:

Parcel 304 0.38 acres @\$40,000/acre + \$31,700 improvements = \$46,900

The County is represented by outside eminent domain counsel Bill Doney. The parties reached an Agreement through negotiations with the attorneys. Staff and the Martins agreed on the terms of the Agreement that is attached to this memorandum as Exhibit A. The settlement terms are:

- The County will pay to the Martins \$27,500 for right-of-way parcel 304 inclusive of all severance damages, damages to the improvements and loss of the oak trees.
- Statutory attorney's fees of \$3,630.
- All costs and expert witness fees of \$7,637.
- One 20' wide concrete driveway and culvert with mitered ends as depicted on the attachment to the Agreement at a cost of approximately \$7,700.

The total settlement cost to the County is \$46,467.

By comparison, in February 2017, the County purchased the 18.72-acre Greene property located at the northeast corner of 66th Avenue and 53rd Street for a future stormwater park for \$558,900 (\$29,855 per acre) which was an arm's length transaction without the threat of eminent domain. The County previously purchased the Miami Block from Central Groves at the southwest corner of 66th Avenue and 69th Street for \$35,250/acre for the entire 18.59 parcel (\$655,298.00) and \$42,500/acre for 13.78 acres from Central Groves on the west side of 66th Avenue at 61st Street.

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 Martins. 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 of the Martins. The County has incurred significant savings by not having to hire our trial witnesses: appraiser, engineer and land planner.

STAFF RECOMMENDATION: Staff recommends the Board approve the Agreement for the Martin property and authorize the Chairman to execute the document on behalf of the Board.

FUNDING: Funding in the amount of \$46,467 for this acquisition is budgeted and available from Traffic Impact Fees/District II/ROW/66th Ave/49th to 69th St, Acct# 10215241-066120-07806.

Attachments: Agreement with the sketch and legal description of right-of-way Parcel 304

Copies to: Mickey Barkett, Esq.
Bill Doney, Esq.