



Office of

Attorney's Matters 05/10/2022

INDIAN RIVER COUNTY ATTORNEY

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

MEMORANDUM

TO: Board of County Commissioners

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

FROM: William K. DeBaal, Deputy County Attorney

DATE: May 3, 2022

SUBJECT: Settlement of Lease Interest for Parcel 127
Tenant Amanda Tongay d/b/a Empire Equine 7905 66th Avenue

The following information is submitted for consideration by the Board of County Commissioners (Board) in approving the settlement for acquiring a lease hold and any other interests in property associated with the construction of 66th Avenue north between 69th and 85th Streets (hereinafter referred to as "Project"), in Indian River County. The limits of the overall Project are from the intersection of SR 60 to Barber Street in Sebastian.

On July 6, 2021, the Board of County Commissioners approved the purchase of the fee simple interest in Parcel 127 from Frederick Lipfert located at 7905 66th Avenue. The property is a 12.24-acre tract which lies on the west side of 66th Avenue. The property is zoned A-1, Agricultural, up to one unit per five acres. The County purchased a 1.07-acre strip of right-of-way along the eastern boarder of the property. The oblong strip extends 455 feet along 66th Avenue beginning at a width of 126 feet at the south narrowing to 68 feet at the north end of the property. The property has a tenant, Empire Equine, owned by Amanda Tongay, who leases the property for her horse boarding business. The leased property is improved with a barn, riding ring, and pastures divided into five paddocks, however, no buildings lie in the part taken. There is a small residence on the property not included in the lease. Improvements to the property to be taken include fencing, shade trees, a driveway and a part of the eastern most pasture paddock. In the purchase agreement with Mr. Lipfert, the County agreed to replace the wood post and board fence along 66th Avenue.

The County now needs to extinguish Ms. Tongay's lease hold interest on the property, but only on that portion that was purchased as right-of-way. According to eminent domain statutes, tenants are entitled to notice and the opportunity to present a claim for potential damages, including business damages, due to the acquisition of the portion of land subject to the lease. Ms. Tongay claims that she has operated her business, Empire Equine, for longer than 5 years. Eminent domain law requires a business owner to operate a business for a minimum of 5 years in order to make a business damage claim. She also claims that the loss of the acre of property will reduce the number of horses she can board at her facility, as almost an acre of pasture will be lost. Normally, the lease holder would hire an appraiser to determine the amount of loss of value sustained to the lease as a result of the take. Also, an accountant would be retained to evaluate the business damages due to the take. The County, under eminent domain law, is responsible for the lease holder's expert witness costs and fees, together with the County's own experts needed to evaluate and if necessary, refute

the lease holder's claims.

Empire Equine was sent notice of the County's intent to acquire its leasehold interest on the part of the leasehold property comprising Parcel 127. Empire was also sent notice of its right to claim business damages to the businesses they operate on the properties. The County filed a lawsuit in Eminent Domain against Tongay/Empire on February 17, 2022. A hearing has been scheduled on May 26, 2022, to hear the County's Motion for the Order of Take. At the hearing, the County would bear the burden of proof to show the property is needed for the Project. The County is represented by Bill Doney, Esq., the County's outside counsel in this matter.

Mickey Barkett of Barkett Law, P.A. now represents Ms. Tongay and Empire Equine. Through negotiations with outside counsel, Tongay/Empire have agreed to settle all claims for \$15,000, inclusive of all expert fees, costs and attorney's fees. The County has also agreed to install a 24' wide driveway apron to accommodate ingress/egress of horse trailers. Settlement at this time will avoid the additional costs of our own experts testifying at the Necessity of Take hearing, payment of additional attorney's fees to outside counsel and eliminating the need for the County to hire an appraiser and accountant for future litigation. Settlement at this time will mean all property interests in Parcel 127 will be acquired in advance of the Florida Department of Transportation's June 1, 2022 deadline to certify acquisition of right-of-way for Phase II of the 66th Avenue Improvement Project. Since a law suit has been filed in this matter, the Parties will enter into a stipulated settlement agreement settling all claims available to Tongay/Empire and have it approved by the court.

Should the Board choose to reject the settlement, the County will proceed to the Order of Take hearing. The parties will then attend a mediation conference in order to settle the issue of compensation. If the mediation is unsuccessful, the parties will proceed to a twelve (12) person jury trial and the jury will determine the amount of compensation to be paid to the lease holder.

FUNDING: Funding in the amount of \$15,000.00 for the acquisition is budgeted and available from Traffic Impact Fees/District I/ROW/66th Ave/69th Street – 85th Street, Account # 10215141-066120-16009.

RECOMMENDATION: Staff recommends that the Board approve the proposed settlement of all claims and costs of Amanda Tongay d/b/a Empire Equine in this law suit in the amount of \$15,000 and authorize outside counsel to proceed with preparation and execution of the necessary court documents needed to settle the case and conclude the law suit.

Attachments: Parcel 127 sketch and legal description