



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

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

MEMORANDUM

TO: Board of County Commissioners

FROM: Dylan Reingold, County Attorney

DATE: February 10, 2021

SUBJECT: Ocean Concrete and George Maib v. Indian River County

BACKGROUND.

This case arises out of a dispute regarding a proposed development of property for use as a concrete batch plant. The plaintiffs' fourth amended complaint set forth three counts against Indian River County (the "County"): Count I for inverse condemnation or regulatory taking; Count II for violation of the Bert J. Harris Act; and Count III for compensatory damages and declaratory judgment pursuant to 42 U.S.C. § 1983. On November 20, 2015, a jury returned a verdict in favor of the County on Count III, finding that the plaintiffs' procedural due process rights were not violated. On August 19, 2016, the circuit court issued a final judgement in favor of the County on all remaining counts.

The case was appealed and on March 14, 2018, the district court affirmed in part, reversed in part and remanded. The appellate court upheld the trial court ruling on the inverse condemnation or regulatory taking count and the count under 42 U.S.C. § 1983. However, the appellate court ruled that the County was liable under the Bert J. Harris Act. The County sought an appeal with the Florida Supreme Court, which denied taking jurisdiction.

At the trial on damages after remand, the jury returned a verdict in favor of Maib in the amount of \$2,000,000. The County appealed that decision to the Fourth District Court of Appeal, which upheld the jury award.

The deadline to file a notice with the Florida Supreme Court is February 24th. The County would then have until March 8th to file a jurisdictional brief with the court. Based upon prior filings, the County Attorney's Office anticipates that the cost of filing the brief would not exceed \$7,500.

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FUNDING.

Funding in the amount of \$7,500 to cover filing of the brief will be provided by the Self-Insurance Fund/Risk Management/General Liability – Ocean Concrete Account 50224619-034530-19901. The Self-Insurance Fund will then be reimbursed for this expense by our insurance carrier since the County has met the \$250,000 deductible for this case per the insurance policy.

RECOMMENDATION.

The County Attorney's Office recommends that the Indian River County Board of County Commissioners approve seeking jurisdiction with the Florida Supreme Court.