



Office of

Attorney's Matters 09/14/2021

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: September 7, 2021

SUBJECT: Approval of Settlement Agreement at Mediation for Parcel of Right-Of-Way Located along 69th Street west of 66th Avenue, Vero Beach, FL 32967 Parcel 313, Johnny and Jackie Dent

Jackie and Johnny Dent are the owners of Parcel 313 located at 6890 69th Street. The property is 9.89 acres in size and zoned A-1, Agricultural, up to one unit per five acres. The parcel is undeveloped with no structures on the property and lies on the north side of 69th Street. The Board of County Commissioners of Indian River County (County or the Board) needs to acquire a 70' wide parcel or 0.53 acres to be used as right-of-way. There is barbed wire fencing, palm trees and oak trees located in the area of take. The property is used for pasture land for the Dent's miniature horse raising business, the Dent Family Miniature Horse Ranch. An aerial photo of the property is found below as *Figure 1*.

On February 2, 2021, the Board approved a Resolution of Necessity after reviewing the safety, cost, alternative routes, long-range planning and environmental aspects of the 66th Avenue project in relation to the proposed take. On May 4, 2021, the Board made an unconditional offer to purchase the needed right-of-way for \$40,000. Suit was filed and the Circuit Court scheduled an Order of Take hearing for the parties for September 2, 2021. Prior to the hearing on August 16, the parties attended a mediation conference with Randy Brennan as the mediator. Acquisition of this parcel is important as it provides needed right-of-way for the expansion of 69th Street at its intersection with 66th Avenue.

At mediation, the County, represented by its outside Counsel Bill Doney, stressed that the Murphy reservation incumbering the southern 100 feet of the Dent's property is a valid reservation and produced the Murphy reservation deed as proof. The County also cited the Martin settlement amount as being a strong comparable as the properties were similar in size and had like improvements. The Dents submitted that their property should be given a higher value than the Martin property as the Dent parcel on 69th Street was on a paved street while the Martin property on 65th Street was on a dirt road. The parties compromised on \$45,000 to settle all claims, including business and severance damages, in resolution of the entire lawsuit.

Staff supports this settlement. If the parties would have proceeded to an Order of Take hearing, the County's attorney's fees and expert witness costs alone would have exceeded \$5,000. Additionally, the increased amount settles the entire case against the Dents, allowing the County to proceed with the 66th Avenue project without further delays. The County will pay \$10,000 to David Holloway, the Dent's

attorney and \$20,000 to the expert witnesses hired by the Dents, namely an engineer, appraiser and arborist for a total settlement amount of \$75,000. The Dents will be responsible for relocating or replacing the existing fence. At the time of construction of the 69th Street improvements, the County will install a 20' wide driveway with an underlying culvert. The County will stake the new right-of-way line so the Dents may relocate the fence.

Figure 1. Dent aerial photo.



If the Board approves this Agreement, the parties will incorporate the Agreement into a Stipulated Final Judgement, and once the Order is signed by the judge, the County will deposit the \$75,000 into the registry of the Court, and title to the property will pass to the County by operation of law. The case will then be concluded and all appeal rights will be waived.

FUNDING: Funding in the amount of \$75,000 is budgeted and available from District 2 Impact Fees/ROW/66th Ave, 49th Street- 69th Street, Account # 10215241-066120-07806.

RECOMMENDATION: Staff recommends the Board approve the Settlement Agreement at Mediation for the Dent property and authorize the Chairman to execute the document on behalf of the Board.

Attachment: Settlement Agreement at Mediation

Copies to: David Holloway, Esq.
Bill Doney, Esq.