



*Office of*

*Attorney's Matters 05/17/2022*

# INDIAN RIVER COUNTY ATTORNEY

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## MEMORANDUM

TO: Board of County Commissioners

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

FROM: William K. DeBaal, Deputy County Attorney

DATE: May 10, 2022

SUBJECT: Settlement of Lease Interest for Parcel 132  
Tenant B&B Farms, Inc. d/b/a Countryside Citrus, 6555 81<sup>st</sup> Street

The following information is submitted for consideration by the Board of County Commissioners (Board) in approving the settlement for acquiring a leasehold and any other interests in property associated with the construction of 66<sup>th</sup> Avenue north between 69<sup>th</sup> and 85<sup>th</sup> 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 September 14, 2021, the Board of County Commissioners approved the purchase of the fee simple interest in Parcel 132 from Frederick W. Van Antwerp and Florence B. Van Antwerp, as Co-Trustees of the Frederick W. Van Antwerp and Florence B. Van Antwerp Revocable Trust Agreement (the Van Antwerps). The property is located at 6555 81<sup>st</sup> Street and consists of a 4.39 acre rectangular shaped parcel on the east side of 66<sup>th</sup> Avenue and south of 81<sup>st</sup> Street as shown in the attached Aerial Photograph attached and labeled Exhibit A.

The property is zoned A-1, Agricultural, up to one unit per five acres. The County purchased a 0.99-acre strip of right-of-way along the western border of the property. The oblong strip extends 333 feet along 66<sup>th</sup> Avenue beginning at a width of 126 feet at the south widening to 168 feet at the north end of the property. The property has a tenant, B&B Farms, Inc. d/b/a Countryside Citrus (Countryside) owned by the Banack family. The area needed for right of way contains no improvements, fencing or structures. In the past, the property has been used as part of Countryside's corn maze during the fall.

Countryside also leases adjoining parcels to the east and together, the parcels form Countryside Citrus, which sells and ships fresh fruit, juice and other related items in the country store on site. All of the buildings that make up Countryside Citrus are located on the adjoining parcels to the east and not on the 4.39 acre parcel at the corner of 66<sup>th</sup> Avenue and 81<sup>st</sup> Street.

The County now needs to extinguish Countryside's leasehold 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. Countryside claims that it has operated the business 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. Countryside also claims that the loss of the acre of property will reduce the size of the corn maze and adversely affect any future expansion of the Countryside business. Normally, the leaseholder 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 leaseholder's expert witness costs and fees, together with the County's own experts needed to evaluate, and if necessary, refute the leaseholder's claims.

Countryside was sent notice of the County's intent to acquire its leasehold interest on the part of the property comprising Parcel 132. Countryside was also sent notice of its right to claim business damages to the business they operate on the property. The County filed a lawsuit in Eminent Domain against Countryside 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.

Summer DeGel of the law firm of Gray Robinson now represents Countryside. Through negotiations with outside counsel, Countryside has agreed to settle all claims for \$15,000, inclusive of all expert fees, costs and attorney's fees. 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 132 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 66<sup>th</sup> 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 Countryside 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/66<sup>th</sup> Ave/69<sup>th</sup> Street – 85<sup>th</sup> Street, Account # 10215141-066120-16009.

**RECOMMENDATION:** Staff recommends that the Board approve the proposed settlement of all claims and costs of B&B Farms, Inc. d/b/a Countryside Citrus 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 132 sketch and legal description