



Office of

Attorney's Matters 06/07/2022

**INDIAN RIVER COUNTY
ATTORNEY**

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

DATE: May 24, 2022

SUBJECT: Counteroffer for a Parcel of Right-Of-Way Located at
8055 66th Avenue, Vero Beach, FL 32967 Parcel 130
Owned by Robert and Mary Grace Sexton

On February 15, 2022, the Board of County Commissioners extended an unconditional offer to Robert and Mary Grace Sexton (the Sextons) to purchase property needed for right-of-way at the northern end of the 66th Avenue Improvement Project, Phase II. You will recall the Sextons own an 18.85-acre parcel of property that lies on the west side of 66th Avenue between 77th and 81st Streets. This site is rectangular in shape. The property is located outside the urban service boundary and is zoned A-1, Agricultural, up to one unit per five acres and is improved with an active citrus grove. The County needs a 0.40-acre triangle shaped parcel to be used as right-of-way for the 66th Avenue project. The right-of-way parcel has 590 feet of frontage along 66th Avenue and is 72 feet wide at its deepest point. Improvements within the 0.40 acres are citrus trees with accompanying irrigation and fencing. An aerial photo of the parent parcel and sketch and legal description of the part to be taken are attached to this memorandum. The property is an active, producing grove.

A recent appraisal establishes the value of the partial taking to be \$20,500.00 which equates to a value of \$51,250 per acre. A copy of the appraisal is available for review at the Board of County Commissioners' office. At the Board's meeting in February, an unconditional offer of \$40,000.00 was approved.

Staff has been negotiating with the Sextons, and relayed the Board's unconditional offer of \$40,000 to them. The Board is required to make an unconditional offer to the Sextons prior to filing suit in eminent domain. Suit was filed by the County's outside counsel, Bill Doney, on March 22, 2022. The Sextons have not hired an attorney or any expert witnesses and

have continued to negotiate a settlement with the County. In a meeting held May 13, 2022, the Sexton's counteroffered with \$50,000.00 in full and final settlement of all claims for damages, fees and costs they may have against the County. They contend that the appraisal and the unconditional offer do not provide adequate compensation for the fence that lies within the area of take. The Sextons are not seeking any extended possession or driveway improvements. They will accept responsibility for replacement of the fence after it is taken down during the clearing of the right-of-way when construction begins on Phase II of the project, from 69th to 81st Streets.

Recent offers to properties along 66th Avenue include the following:

Ken Chestnut property acquisition at 6900 65th Street, Parcel 303:

- appraisal report established fair market value at \$29,500
- 0.38 acre take from a 10-acre parcel
- Board offered incentive amount of \$47,000 and permitted second driveway (59.3% above appraised value) or \$123,684/acre

Johnny and Jackie Dent acquisition at 6855 69th Street, Parcel 313:

- appraisal report found fair market value to be \$20,700
- 0.53 acre take from a 10 -acre parcel
- Board offered \$40,000 for the right-of-way (93.2% above appraised value) or \$75,472/acre and a driveway cut.

It should be pointed out that both of the above settlements contained significant expert witness and attorney's fees. The proposed counteroffer by the Sextons is in line with the Board's preference that the benefit of the settlement should go to the aggrieved landowner rather than out of town experts and attorneys.

After review of the file and discussion with staff, it is recommended that the Board approve the Sexton's counteroffer in the amount of \$50,000. There are no expert witness fees, attorney's fees or costs associated with the settlement.

Funding: Funding in the amount of \$50,000 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 the Board approve the counteroffer to purchase the necessary right-of-way from the Sextons at a price of \$50,000 and authorize the County Attorney's Office or outside counsel to execute any documents needed to settle the lawsuit.

Attachments: Aerial photo
Sketch and Legal Description