

CALDWELL PACETTI
EDWARDS SCHOECH & VIATOR LLP

ATTORNEYS AT LAW

MANLEY P. CALDWELL, JR.
KENNETH W. EDWARDS
CHARLES F. SCHOECH
MARY M. VIATOR
WILLIAM P. DONEY
FRANK S. PALEN
JOHN A. WEIG

1555 PALM BEACH LAKE BOULEVARD
SUITE 1200
WEST PALM BEACH, FLORIDA 33401

PARALEGAL
EMILIE PEARSON, CP

www.caldwellpacetti.com

OF COUNSEL
BETSY S. BURDEN
RUTH P. CLEMENTS

TELEPHONE: (561) 655-0620
TELECOPIER: (561) 655-3775

MEMORANDUM

TO: William Debraal, Deputy County Attorney
FROM: William P. Doney, Esq.
DATE: December 1, 2020
RE: Proposed Agreed Order of Taking
Parcel 105
Owners: Deepti and Harish Sadhwani

This Memorandum is written to address some of the potential issues and risks involved in proceeding to a contested Order of Taking hearing in the above-referenced matter and to recommend Board of County Commission approval of an Agreed Order of Taking. As a bit of background, this eminent domain proceeding was filed on October 1, 2020 and involves only one parcel (Parcel 105 owned by Deepti and Harish Sadhwani). The case was filed as a “quick take” proceeding in accordance with Chapter 74, Florida Statutes. Under this statutory procedure, an Order of Taking hearing is initially scheduled before the Court (no jury). At such a hearing, the condemning authority is required to prove its legal entitlement to condemn the property, i.e., is there a public purpose and necessity for the acquisition. The government must also present evidence that it has obtained a good faith estimate of value (appraisal) of the subject property. Additionally, there are numerous conditions precedent that a governmental entity must satisfy in order to be entitled to entry of an Order of Taking. Assuming the government meets this burden, the Court will enter an Order of Taking requiring the government to deposit in the Court Registry the amount of its appraised value of the property taken. Title to the property then vests in the government and it can immediately proceed with its project. The property owner may withdraw the deposited funds from the Court Registry. The issue of the amount of full compensation to be paid to the property owner (if the case is not settled) is ultimately determined at a jury trial before 12 jurors.

In the subject case, the property in question is a vacant agricultural land located at the northwest corner of 66th Avenue and 65th Street comprising 19.59 acres. The Sadhwanis

acquired the property in 2004 and paid approximately \$39,500.00/ acre for the land. The proposed County acquisition comprises 5.28 acres of frontage along 66th Avenue and 65th Street to be utilized for the road widening and related improvements. Parcel 105 also includes an additional 2.58 acres of land at the northwest corner of the property to be utilized as a Stormwater Management Facility. The proposed acquisition results in a total taking of 7.86 acres leaving a remainder parcel of 11.73 acres.

The County's updated appraisal for the lands taken is in the amount of \$211,500.00. The appraisal concludes an opinion of value of \$25,000.00 per acre plus additional compensation for improvements (primarily fencing) on the property. The appraiser found no severance damages to the remainder property. After extensive negotiations and subject to Board of County Commission approval, the parties have agreed to entry of an Order of Taking whereby the County would deposit in the Court Registry the sum of \$314,264.00. In addition, the County would agree that if the matter proceeds to trial, even though the County may present testimony of a lower value, the property owners would receive no less than \$314,264.00 in full compensation.

I recommend that the County enter into an Agreed Order of Taking in this matter for several reasons. The Sadhwani parcel is the last parcel that the County needs to acquire in order to proceed with the 66th Avenue or mainline segment of the project. The acquisition will allow the project to move forward without delay and will assure DOT funding. While the suggested deposit is in an amount significantly higher than the County's appraisal, the County has been entering into settlements involving other parcels in the project in a comparable per acre dollar amount. Also, the fact that the Sadhwanis paid approximately \$40,000.00/ acre for the land in 2004 makes it unlikely that a jury will award less for the land taken 16 years later. Further, while the property owners have not yet produced an appraisal, their contention is that the property will suffer significant severance damages caused by the taking due to the change of shape and configuration of the remainder property, drainage issues caused by the taking, changes in the elevation and grade of the new roadways as compared to the remainder property and diminished access.

Additionally, there are several technical or procedural issues that could create potential defenses to the entry of an Order of Taking. Florida case law repeatedly states that eminent domain is one of the "harshest proceedings in the law" and all doubts must be resolved in favor of the property owner. In the subject case, the County originally adopted only one eminent domain Resolution for the fee taking. The required pre-suit offer was based on an appraisal that included only the fee taking. It was then discovered that there would be a significant change of grade at the remainder Sadhwani on the 65th Street side of the project. A second Resolution was then adopted to acquire a temporary construction easement in the 65th Street area. However, the County's pre-suit offer was based on the fee take only and included no compensation for potential severance damages. After suit was filed, the construction plans were revised to eliminate the need for the temporary construction easement and the temporary construction easement acquisition has been deleted from the lawsuit. This factual background presents several potential procedural defenses to the proposed acquisition. A denial of the requested Order of Taking would

either require the County to amend its pleadings and reschedule an Order of Taking Hearing. At best, this would result in a several month delay in the commencement of the project and the County would still potentially face another contested Order of Taking hearing. Alternatively, if the Order of Taking is denied, the Court could dismiss the lawsuit in its entirety thereby resulting in an even greater delay to the project as well as additional costs and attorney's fees.

For the foregoing reasons, it is recommended that the Board of County Commissioners approve entry of the proposed Order of Taking.

William P. Doney, Esq.