



Office of

Attorney's Matters 06/11/2019

**INDIAN RIVER COUNTY  
ATTORNEY**

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

**MEMORANDUM**

**TO:** The Board of County Commissioners

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

**FROM:** William K. DeBraal, Deputy County Attorney

**DATE:** June 4, 2019

**SUBJECT:** Acquisition of Right-Of-Way for Phase III of 66<sup>th</sup> Avenue Improvements from Glen C. Besancon – 6725 66<sup>th</sup> Avenue

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Glen C. Besancon is the owner of a 3.36 acre parcel of property on the west side of 66<sup>th</sup> Avenue just south of 69<sup>th</sup> Street which is depicted on the aerial photo attached to this memorandum as Exhibit "A". The Parcel is zoned A-1, Agricultural, up to one residential unit per five acres and lies outside of the Urban Services Boundary. This site is improved with a three bedroom, two bath 2,000 square foot single family residence. Mr. Besancon has owned and resided on the Parcel since 1975.

Construction plans for this section of 66<sup>th</sup> Avenue call for the County to acquire 0.87 acres of right-of-way from Mr. Besancon consisting of a 156-foot wide strip along the length of the eastern border of the property. A sketch and legal description of the right-of-way is attached to this memo as Exhibit "B". The total property needed is  $\pm$  26% of the Parcel, leaving a remainder of 2.49 acres. A settlement conference was held on April 25, 2019, with Curt and Glen Besancon (sons of Mr. Besancon), their attorney Brent Simon, Rich Szpyrka, Monique Filipiak, and the Deputy County Attorney in attendance. At the conference, the Besancon sons explained that due to their father's age and health, they thought it would be best for their father to remain in his home and inquired about acquiring the County owned lot adjacent to the south of the Parcel. The sons plan on building an additional home utilizing the adjacent County owned lot so they can be in close proximity to their father. The adjacent property was obtained in 2006 from Wendy and Robert Gardiner for \$250,000. The former Gardiner property was also improved with a small home that was demolished shortly after it was purchased by the County. The Gardiner property depicted on the aerial photo attached to this memorandum as Exhibit "C", is a 0.94 acre parcel that is 90 feet wide and

approximately 454 feet long, after the right-of-way needed for 66<sup>th</sup> Avenue is deducted.

The County's initial appraisal of the Parcel was performed by Armfield & Wagner and they assigned a value of \$42,100 for the 0.87 acres of right-of-way property needed and \$220,000 for the entire property. The appraiser retained by the Besancons valued the property at \$473,973 for a partial take and \$600,000 for the entire parcel.

After further discussion, the parties reached an agreement where the County would convey the 0.97 acre Gardiner parcel to Mr. Besancon and the sum of \$200,000 for the needed 0.87 acre right-of-way Parcel. The conditions of the sale are as follows:

1. The Besancons may create two equal size parcels of property by combining the remainder parcel and the Gardiner parcel.
2. Each parcel will have the existing impact fees credited to the land.
3. The north driveway will remain in place and the south driveway may be located as far south as permitted by County code, for a total of two driveways, one for each parcel.

These conditions were approved by Community Development and Public Works.

Due to the close proximity of the new right-of-way line to the front of the house, (less than 20 feet) most eminent domain appraisers would deem the house substantially damaged or a total loss. In arriving at the settlement amount, staff reasoned that its own appraiser deemed the value of the whole parcel to be \$220,000 and that the resale value of the Gardiner property would be compromised by its narrowness, making it most valuable to adjacent property owners like the Besancons.

The Besancons sought appraisal, engineering and land planning fees in the amount of \$19,552.50 which was negotiated downward to \$18,000 and attorney's fees pursuant to the eminent domain statute of 33% of the benefit gained for the client ( $\$200,000 - \$42,100 = \$157,900 \times 0.33 = \$52,107$ ), making the total cost to purchase \$270,107. In the interest of settlement, Mr. Simon agreed to waive any right to attorney's fees associated with the non-monetary benefits obtained as a result of acquiring the Gardiner property and the conditions of the sale listed above.

By purchasing the property in advance of filing a lawsuit, staff is attempting to save on expert witness fees that would have been incurred by both parties. Pursuant to state statutes, the County is responsible for paying reasonable expert witness fees incurred by both parties. As noted in the past, expert witness fees for both parties often exceed \$100,000 by the time the suit is filed and mediation is held. The County has achieved significant savings in this case by not having to hire our trial witnesses (appraiser, engineer and land planner), outside counsel and compromises on attorney's fees and expert costs.

Besancon memo to BCC

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At the conclusion of the settlement conference, the parties entered into a hand written agreement which will be used as the basis for a more formal agreement setting forth the closing date and time.

**FUNDING:** Funding for this acquisition is budgeted and available from Traffic Impact Fees/District I/ROW/66<sup>th</sup> Ave-65<sup>th</sup> Street -85<sup>th</sup> Street- Acct#10215141-066120-16009.

**STAFF RECOMMENDATION:** Staff recommends the Board approve conveying the Gardiner property to the Besancons, approve the agreement to purchase the 0.87 acre Besancon property for \$200,000 with the stated conditions, approve costs incurred by the Besancons of \$18,000 and approve the settlement of attorney's fees of \$52,107 and authorize the Chairman to execute a more formal purchase and sale agreement when drafted and approved by the parties on behalf of the Board.

Attachments: Exhibit "A" Aerial Photo  
Exhibit "B" sketch and legal description of the right-of-way  
Exhibit "C" Aerial photo of the Gardiner property

Copies to: Brent Simon, Esq.