



Office of

Attorney's Matters 3/28/2023

**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
William K. DeBral, Deputy County Attorney
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MEMORANDUM

TO: Board of County Commissioners

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

FROM: William K. DeBral, Deputy County Attorney

DATE: March 15, 2023

SUBJECT: Offer of Judgment for a Parcel of Right-Of-Way Located at 6600 65th Street, Vero Beach, Owned by Harish and Deepti Sadhwani

Harish and Deepti Sadhwani own a 19.54 acre parcel of property located at 6600 65th Street. Included in this acreage is a 0.91 acre strip of existing right-of-way that contains a portion of the pavement of 66th Avenue and right-of-way maintained by the County, so the net size of the parcel is 18.63 acres. The property is located at the northwest corner of 66th Avenue and 65th Street. This site is rectangular in shape with 1,309 feet of frontage along 66th Avenue and is 652 feet deep. The property is located outside the urban service boundary and is zoned A-1, Agricultural, up to one unit per five acres. The property is improved with 3 strand barbed wire fencing. There are no structures on the property. The Sadhwani's purchased this property back in 2004 for \$760,000, or approximately \$38,895 per acre.

In order to accommodate the planned improvements to 66th Avenue, the County acquired approximately 6.95 acres from the Sadhwani property: 4.37 acres will be used for right-of-way and 2.58 acres will be used for a stormwater retention pond. The only site improvements lying within the area of take are fencing, a gate, artesian wells and some grading to provide drainage for the site. A copy of the sketch of the parent parcel, the part to be taken, and remainder are attached to this memorandum. The remainder parcel is 11.68 acres in size.

In October 2020, the County filed an Eminent Domain lawsuit against the Sadhwani's and on December 21, 2020, the judge entered an Agreed Order of Take for the 6.95 acres of

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property needed for the 66th Avenue road project and the County took possession of the parcels after depositing \$314,264.00 into the registry of the Court. Some discovery has taken place in the lawsuit and the County would like to proceed with mediation and if that is not successful, eventually trying the case before a 12-member jury. The County recently updated its appraisal using Christopher Mafera of Real Estate Analysts, Inc. Mr. Mafera has testified as an expert witness in numerous eminent domain trials both for government entities and private landowners. His appraisal establishes the value of the part taken at \$379,500 and valued the entire remainder parcel at \$644,400. The valuation of the property taken was calculated as follows:

Land value:	\$215,700	(\$31,000/acre)
Improvements:	65,800	
Damages (Incurable):	26,200	
Cost to Cure:	<u>71,800</u>	
TOTAL	\$379,500	

Severance damages apply to the take due to a 40% reduction to the size of the property as well as the shape of the remainder property as a result of the location of the retention pond. The "cost to cure" is primarily a result of the cost to install a new boundary fence and to provide drainage improvements in order to restore the drainage to the property as in the before taking condition. A copy of the appraisal is available for review at the County Attorney's Office.

The appraiser retained by the Sadhwani's is of the opinion that full compensation to the property owner should be in the amount of \$1,803,725. The appraiser establishes a land value of \$100,000 per acre for the 7.8566 acres or \$785,660. When the value of the improvements are added in (trees, wells, fencing) of \$80,890 he claims it results in a value of the part taken as \$866,550. He then values the damages due to the reduction in size and change of shape in the amount of \$117,280. A cost to cure of \$819,895 is then added, opining that the entire remainder property would have to be filled with 90,000 cubic yards of soil in order to prevent flooding that will supposedly be caused by the new retention pond and elevated new roadway. Thus, he states the total compensation to the Sadhwani's should be \$1,803,725.

As you are aware, in an eminent domain proceeding, the condemning authority is responsible for payment of the landowner's reasonable costs and attorney's fees. One way of attempting to limit the County's exposure to expert witness fees and costs in this matter is to make the Sadhwani's an Offer of Judgment. This is done by filing the offer with the court. A conference call was held last week between outside eminent domain counsel Bill Doney, Public Works staff and all attorneys from the County Attorney's Office. One of the topics of the call was to decide on a recommendation to be made to the Board of County Commissioners as to the amount of the Offer of Judgment. Considering the

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latest County appraisal and the risk that the County is exposed to given the high value placed on the property by the Sadhwani's appraiser, all agreed to recommend making an Offer of Judgment of \$485,000.

If the Sadhwani's accept the offer of judgment, the County would have to pay the amount of the offer to the Sadhwani's, attorney's fees and expert witness fees/costs would be determined and the case would be concluded. If the Offer of Judgment is not accepted and the matter proceeds to trial, if the Sadhwani's receive a verdict less than the Offer of Judgment, the County would not have to pay any expert's witness fees or costs incurred 30 days from the date the Offer of Judgment is made. The County would receive a credit of \$314,264 already paid in the Agreed Order of Take.

Funding: Funding in the amount of \$189,020 is budgeted and available in Traffic Impact Fees/District 2/66th Ave/49th to 69th Street/ROW (Account # 10215241-066120-07806) and the balance of \$295,980 is budgeted and available in Traffic Impact Fees 2020/District I/66th Ave/49th to 69th Street/ROW (Account # 10415141-066120-07806).

Recommendation: Staff recommends the Board approve an Offer of Judgment to the Sadhwani's in the amount of \$485,000.

Attachments: Aerial photo, Sketch and Legal Descriptions