



Office of

Attorney's Matters 09/15/2020

**INDIAN RIVER COUNTY
ATTORNEY**

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

DATE: September 9, 2020

SUBJECT: Resolution of Necessity for a Temporary Construction Easement Located at 6600 65th Street, Vero Beach, FL 32967 Owned by Harish and Deepti Sadhwani

INTRODUCTION: The following information is submitted for consideration by the Board of County Commissioners (Board) in approving the Resolution of Necessity for property acquisition associated with the construction of 66th Avenue north of 57th Street (hereinafter referred to as "Project"), in Indian River County. The limits of the Project are from the intersection of SR 60 to Barber Street in Sebastian.

PROJECT PURPOSE AND CHRONOLOGY: The project consists of expanding 66th Avenue from a 2-lane road to a 4-lane road with turn lanes, improved drainage, replacement of bridges over the canal, 8' sidewalks and signalization. The project also includes roadway signing and pavement marking items. Right-of-way is needed on the side streets to accommodate increased bridge elevations and turn lanes for the three lane bridges over the canal.

Harish and Deepti Sadhwani own a 19.54 acre parcel of property located at 6600 65th Street. This property is on 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. The parcel contains no structures, only 3 or 4-strand barbed wire fencing that will be affected by the take.

In order to accommodate the planned improvements to 65th Street and 66th Avenue, the County needs to acquire a 2.58 acre parcel of property to be used for a stormwater retention pond and a 156' X 1,309' strip (5.28 acres) of property to be used as right-of-way from the Sadhwanis. The total take is approximately 7.86 acres. The Board approved a Resolution of Necessity for those two parcels, collectively, Parcel 105, on July 14, 2020. The required "Notice to Owner" information has an Unconditional Offer and have been sent to the Owners.

A review of the construction plans revealed that only a 15-foot temporary construction easement (TCE) was needed rather than the 25-foot TCE shown on the sketch and legal description for Parcel 105. Florida Statutes allow a condemning authority to take only the property needed and no more. State law also requires each parcel taken to have its own Resolution of Necessity and Unconditional

BCC Necessity of Take Sadhwani

September 9, 2020

Page | 2

Offer, so staff now presents the Board with a Resolution of Necessity for the Temporary Construction Easement. A recent appraisal established the value of the TCE at \$500.00.

A Resolution of Necessity does not require a public hearing. It requires the Board to review the safety, cost, alternative routes, long-range planning and environmental aspects of the project in relation to the proposed take. The Board considered all of those factors at the meeting of March 17, 2009 and approved the Corridor Study for 66th Avenue and proposed 66th Avenue alignment in front of the Sadhwani property. A copy of the Corridor Study is available for review at the County Commission Office or the Office of the Clerk to the Board.

The Sadhwanis are represented by the law firm of David Holloway, P.A. Upon approval of this Resolution of Necessity, the County will file a lawsuit in eminent domain and file a motion for an Order of Take. If the Court approves the motion, the County will deposit its appraised value into the Court Registry and take title to the right-of-way, and the Sadhwanis may access the deposit in the Court Registry, less any taxes, liens or mortgages owed on the property. 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 Sadhwanis.

Acquisition of this parcel is important as it provides needed right-of-way for the expansion of 65th Street at the intersection of 66th Avenue. The attached Resolution of Necessity provides for the following:

- The Board finds it necessary to acquire the property using eminent domain
- Authorizes the County Attorney or outside counsel to file a lawsuit against the owners of the needed property
- Authorizes County employees and its agents to take action necessary to prosecute the lawsuit to final judgment

FUNDING: Funding in the amount of \$500.00 is budgeted and available from Optional Sales Tax/ROW/66th Ave, 49th Street- 69th Street, Account # 31521441-066120-07806.

RECOMMENDATION: Staff recommends that the Board approve the Resolution of Necessity and authorize staff to proceed with the necessary acquisition of the Temporary Construction Easement for Parcel 105 through the County's power of eminent domain.

Attachments:

Proposed resolution

Parcel sketch and legal description of TCE to be taken