



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

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

TO: Board of County Commissioners

FROM: Dylan Reingold, County Attorney

DATE: August 11, 2021

SUBJECT: Ocean Concrete and George Maib v. Indian River County

BACKGROUND.

This case arises out of a dispute regarding a proposed development of property for use as a concrete batch plant. The plaintiffs' fourth amended complaint set forth three counts against Indian River County (the "County"): Count I for inverse condemnation or regulatory taking; Count II for violation of the Bert J. Harris Act; and Count III for compensatory damages and declaratory judgment pursuant to 42 U.S.C. § 1983. On November 20, 2015, a jury returned a verdict in favor of the County on Count III, finding that the plaintiffs' procedural due process rights were not violated. On August 19, 2016, the circuit court issued a final judgement in favor of the County on all remaining counts.

The case was appealed and on March 14, 2018, the district court affirmed in part, reversed in part and remanded. The appellate court upheld the trial court ruling on the inverse condemnation or regulatory taking count and the count under 42 U.S.C. § 1983. However, the appellate court ruled that the County was liable under the Bert J. Harris Act. The County sought an appeal with the Florida Supreme Court, which denied taking jurisdiction.

At the trial on damages after remand, the jury returned a verdict in favor of Maib in the amount of \$2,000,000. The County appealed that decision to the Fourth District Court of Appeal, which upheld the jury award. County sought jurisdiction with the Florida Supreme Court, which was denied.

Under the Bert J. Harris Act, Maib is entitled to recover reasonable costs and attorney fees incurred from the date of the filing of the circuit court action. Instead of litigating the attorneys' fees and costs, counsel has negotiated an agreement for the County to pay \$1,181,250 in attorney's fees and \$167,000 in costs. Although these are large sums, it is important to understand that this litigation results from an action that took place over 14 years ago.

FUNDING.

The total and final payment of \$1,348,245 will be paid from the Self-Insurance Fund/Risk Management/General Liability/Ocean Concrete account number 50224619-034530-19901. Furthermore, a budget amendment from the Self-Insurance Fund Balance will be necessary to cover this expense.

RECOMMENDATION.

The County Attorney's Office recommends that the Indian River County Board of County Commissioners approve the proposed settlement of attorneys' fees and costs and authorize the County Attorney to execute any documents necessary to effectuate such settlement.