



Office of

Attorney's Matters 01/14/2020

INDIAN RIVER COUNTY ATTORNEY

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MEMORANDUM

TO: Board of County Commissioners

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

FROM: William K. DeBraal, Deputy County Attorney

DATE: January 8, 2020

SUBJECT: Necessity of Take Resolution for parcel of property located at 4740 58th Avenue, Vero Beach, FL, owned by Paulette Brown

I. 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 58th Avenue between 47th and 53rd Streets (hereinafter referred to as "Project"), in Indian River County. The limits of the Project are from the intersection of 47th Street to 57th Street.

II. PROJECT PURPOSE AND CHRONOLOGY

The Project consists of expanding 58th Avenue from a two lane road to a four lane road with turn lanes, improved drainage, 5' sidewalks and signalization. The project also includes roadway signage and pavement marking items.

Paulette Brown owns a parcel of property that will be impacted by the improvements to 58th Avenue. This memorandum addresses a 0.22 acre parcel that is needed for right-of-way. Ms. Brown owns a 0.97 acre parcel of property located at 4740 58th Avenue on the east side of 58th Avenue. This site is rectangular in shape with 146.07 feet of frontage along 58th Avenue and is 296.48 feet deep. The property is located inside the urban service boundary and is zoned RS-6, single family, residential, up to 6 units per acre. The parcel contains a 4 bedroom, 3 bath, 2,090 sq. foot wood frame house built in 1990. The residence lies outside of the area of take and will be approximately 70 feet from the new right-of-way line. Site improvements that lie inside the area of take consist of landscaping, approximately two-thirds of a circle driveway and about one half of an ornamental pond.

In order to accommodate the planned improvements to 58th Avenue, the County needs to acquire a 0.22 acre parcel of property from Ms. Brown to be used as right-of-way. A copy of the sketch of the parent parcel, the part to be taken, and remainder is attached to this memorandum. The required "Notice to Owner" information and the Unconditional Offer have been received by the property owner. On January 7, 2020 the Board approved an unconditional offer of \$70,000 for the 0.22 acre parcel which is 58% above the appraised value of \$44,516.

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 January 7, 2020 and approved the Corridor Study for 58th Avenue and proposed 58th Avenue alignment in front of the Brown property. A copy of the Corridor Study is available for review at the County Commission office and the Office of the Clerk to the Board.

Ms. Brown is represented by David Holloway. The parties have agreed to a pre-suit mediation that will be held later this month. If the mediation is unsuccessful at reaching settlement, the County will file a lawsuit in eminent domain and proceed to obtain an Order of Take. If the Court grants the County's Motion for an Order of Take, the County will deposit its Unconditional Offer amount based on the appraisal into the Court Registry and take title to the right-of-way, and Ms. Brown may access the deposit in the Court Registry, less any taxes, liens or mortgages owed on the property. The parties will proceed with the discovery process and present the case to a twelve (12) person jury trial and the jury will determine the amount of compensation to be paid to Ms. Brown.

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:

Funds for this expenditure are budgeted and available from Traffic Impact Fees/District II/ROW/58th Ave- South of 49th Street – 53rd Street, Acct# 10215241-066120-15013.

RECOMMENDATION:

Staff recommends that the Board approve the Resolution of Necessity and authorize staff to proceed with the necessary right-of-way acquisition through the County's power of eminent domain.

Attachments:

Proposed resolution

Parcel sketches and legal description of property to be taken