



Office of

Attorney's Matters 05/12/2020

**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
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MEMORANDUM

TO: Board of County Commissioners

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

FROM: William K. DeBaal, Deputy County Attorney

DATE: May 6, 2020

SUBJECT: Purchase of a parcel of right-of-way located at 4740 58th Avenue, Vero Beach, Florida, owned by Paulette Brown

Paulette Brown owns a 0.98 acre parcel of property located at 4740 58th Avenue. This site is rectangular in shape with 146 feet of frontage along 58th Avenue and is 293 feet deep. The property is located inside the urban service boundary and is zoned RS-6, single family, up to six units per acre. The property was improved with a 4 bedroom, 3 bath, 2,090 sq. foot wood frame house built in 1990 which included a two car garage. The home was severely damaged by a fire in April 2019 and was demolished late last year. Ms. Brown has hired a contractor to build a new house on the existing lot. Construction of the new house is under way, with the walls and the roof in place. The site also contains a detached storage shed. This property is Ms. Brown's homestead property.

An appraisal on the residence before the fire established the value of the entire parcel at \$220,000. The partial taking was valued at \$44,516. Severance damages may apply as the take will result in a 22% reduction to the size of the property if the Murphy Reservation is ignored or 14% if the Murphy Reservation is used. A copy of the appraisal is available for review at the Board of County Commissioners office. According to the appraisal report, the kitchen and master bath were recently improved within the last 5 years. Updates to other areas of the home appear to have been made to accommodate wheel chair access. On January 7, 2020, the Board approved an unconditional offer of \$70,000 to Ms. Brown for purchase of the needed right-of-way for the 58th Avenue Project.

In order to accommodate the planned improvements to 58th Avenue, the County needs to acquire approximately 0.22 acres from Ms. Brown, 0.08 acres of which is encumbered by a Murphy Reservation. Site improvements lying within the area of take include approximately two thirds of the concrete circular drive, a majority of the front yard aesthetic pond, palm trees and some landscaping. Two brick pillars have been constructed at the entrance to the driveway, but the pillars lie within the Murphy Reservation. The home lies outside of the area of take and will be approximately 70 feet from the new right-of-way line. A copy of the sketch of the part to be taken is attached to this memorandum.

On March 5, 2020, a pre-suit mediation was held with Ms. Brown, her son Martin and her attorney, David Holloway. The County was represented by Public Works Director Rich Szpyrka, Acquisition Agent Monique Filipiak, Assistant County Attorney Susan Prado, and Deputy County Attorney Bill DeBaal. The mediator was Tony Rodriguez, Esq., who retired from the Broward County Attorney's Office and worked in the eminent domain section.

The appraiser hired by Ms. Brown established a value of the property taken at \$252,890, using comparable parcels that included a parcel with frontage on the Sebastian River and a parcel zoned Light Industrial. At the conclusion of the mediation, the mediator asked if the County would present the below offer to the Board for the Board's consideration. Given the amount of staff time invested in this take, the fact that it is the last parcel needed for construction to commence the project and that the offer was not clearly unreasonable, it was agreed that the offer would be presented to the Board for consideration. The mediator pointed out that this is an unusual case as the prior home burned and was demolished. During the course of an eminent domain trial, the jury makes a visit to the property to view the parcel and walk through the home. In the case at hand, the jury visit would be conducted in a new house rather than the old house. Further complicating matters would be the significant changes that have taken place all around the Brown property. Arabella Reserve Subdivision has installed drainage ponds on either side of the Brown property and cleared the land behind the Brown parcel and installed a road and will begin construction on new houses in the subdivision. These changes make it difficult to predict what the jury may ultimately award as damages to Ms. Brown.

At the conclusion of the mediation, the Browns offered the following settlement terms:

- Purchase price of the needed 0.22 acres of right-of-way would be \$100,000.
- During construction of the 58th Avenue improvements, the county's contractor would install an 18-foot driveway at a location to be determined by Ms. Brown.
- Attorney's fees of \$10,000 and expert witness fees of \$9,500, both of which are significant reductions.

- The County's closing agent would work to obtain a partial release of mortgage from Ms. Brown's mortgage holder.

The total cost of the acquisition would be \$119,500. The County Attorney's Office recommends settlement of this matter for that amount for the reasons set forth above and to avoid future costs which would easily exceed \$30,000 if the matter went to trial.

The County Administrator does not support the purchase price, costs and fees due to the fact that they far exceed the amount of the \$70,000 offer made by the Board earlier this year.

Funding: Funding is budgeted and available in account # 31521441-066120-15813, Optional Sale Tax/right-of-way/58th Avenue 4 lanes 26th Street to CR 510.

Recommendation: Staff recommends the Board discuss this mediation result and adopt the County Attorney's Office recommendation of a total settlement in the amount of \$119,500.

Copies to: David Holloway.
Rich Szpyrka
Monique Filipiak