




Office of Attorney's Matters 12/20/16  
**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: December 14, 2016

SUBJECT: Approval of Agreement to Purchase and Sell Quality Fruit Packers Parcel for 45<sup>th</sup> Street/US Highway 1 Intersection Improvements

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The County has plans to improve the US Highway 1 - 45<sup>th</sup> Street intersection to include an east bound right turn/through lane with a dedicated left turn lane. The boundaries of the project extend west on 45<sup>th</sup> Street approximately 300 feet west of the railroad tracks and provide for an east bound right turn lane onto Old Dixie Highway and an east bound left turn/through lane. Right-of-way is needed from the property owners along the south side of 45<sup>th</sup> Street.

Quality Fruit Packers of Indian River, Inc. (Quality) owns a 2.2 acre parcel of property on the southwest corner of US Highway 1 and 45<sup>th</sup> Street. The southern boundary of the property runs from Old Dixie to US Highway 1 as seen on the attached aerial photo. The property is zoned CH, heavy, commercial and is the site of the Quality Fruit Packers packing house. Quality also owns the parcel to the south along US Highway 1.

In order to complete the improvement project, the County must acquire 0.13 acres or 5,611 square feet of right-of-way property from Quality. The parcel needed is a 15' wide strip that runs parallel to 45<sup>th</sup> Street for the length of the Quality property with a corner clip at Old Dixie. The parcel is improved with landscaping, oak trees and a paved parking lot that is used for truck and trailer parking and also storage of fruit shipping boxes during the off season. There is no ingress/egress to the parcel from 45<sup>th</sup> Street.

In order to arrive at a value for the property, the County obtained an appraisal from Boyle & Drake, Inc. The appraisal report establishes a value of the whole 2.2 acre parcel of \$875,000, (approximately \$9.05/sq. ft.) with the part to be taken valued at \$52,000. The appraisal included \$10,000 damages to the remainder parcel (severance) for a total appraised value of \$62,000. The County extended an offer to purchase to Quality for the appraised value of \$62,000.

Quality, through the owners, Rusty Banack and William Estes, with their attorney, Randy Brennan, met with staff to discuss the offer. Quality pointed out that the Cumberland Farms parcel directly across the street sold for \$12.68/sq. ft. They also expressed concern that the appraisal did not adequately account for severance damages. Quality contended that the 15' take would eliminate about 27 parking places along 45<sup>th</sup> Street. Given the heavy commercial zoning of the property, Quality asserted that such a loss of parking spaces would far exceed the \$10,000 in severance damages provided in the County's appraisal. Given its location at a signaled intersection on US 1 and 45<sup>th</sup> Street and the size of the parcel, Quality felt that this property was one of the last large sized heavy commercial properties in the County and counter offered to sell at \$150,000. Eventually, the parties agreed to a global settlement of \$137,500 inclusive of all fees and expert witness costs.

It should be pointed out that this proposed settlement was reached with a minimum of costs. Aside from the Boyle & Drake appraisal fee of \$2,500, the County did not incur any engineering or land planning expert costs. A parcel situated at this location with its size could easily require pretrial engineering and land use expert fees in excess of \$50,000. Considering that the County would end up paying for the landowner's experts' costs if this matter continues down the path of litigation, paying a higher cost for the property now staves off the avalanche of expert witness fees borne by the County later in the process.

**Funding:** Funding for this expenditure is budgeted and available from Optional Sales Tax/ROW/45th Street/left Turn Lane at US 1, Account # 31521441-066120-13013.

**Recommendation:** Staff recommends the Board approve the purchase and sale for the right-of-way from Quality at a price of \$137,500, inclusive of all fees and costs and authorize the Chairman to execute any documents necessary to close the purchase of the property.

Copies to: Randy Brennan, Esq. Attorney for Quality Fruit Packers