



Office of

Attorney's Matters 02/01/2022

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MEMORANDUM

TO: Board of County Commissioners

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

FROM: William K. DeBaal, Deputy County Attorney

DATE: January 21, 2022

SUBJECT: Resolution of Necessity for two Parcels of Right-Of-Way Located along
66th Avenue between 69th and 85th Streets, Vero Beach, FL 32967:
Parcel 127 (tenant Tongay), Parcel 132 (tenant B& B Farms)

INTRODUCTION: The following information is submitted for consideration by the Board of County Commissioners (Board) in approving the Resolution of Necessity for acquiring a lease hold interests in property associated with the construction of 66th Avenue north between 69th and 85th Streets (hereinafter referred to as "Project"), in Indian River County. The limits of the overall 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 canals, 8 foot 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 Lateral H canal.

There are two properties along 66th Avenue between 69th and 85th Streets where the County has already purchased the fee simple interest from Frederick Lipfert (Parcel 127) and Frederick and Florence Van Antwerp (Parcel 132). As both of these parcels had leases on them, the County now needs to terminate the tenants' lease hold interests on the properties, but only on that portion that was purchased as right-of-way. According to eminent domain statutes, tenants are entitled to notice and possible damages due to the take of the portion of land subject to the lease. The parcels are as follows:

- Parcel 127, 7905 66th Avenue is a 12.24-acre tract formerly owned by Frederick Lipfert which lies on the west side of 66th Avenue. The property is zoned A-1, Agricultural, up to one unit per five acres. The County purchased a 1.07-acre strip of right-of-way along the eastern boarder of the property. The oblong strip extends 455 feet along 66th Avenue beginning at a width of 126 feet at the south narrowing to 68 feet at the north end of the property. The property has a tenant, Empire Equine, owned by Amanda Tongay, who leases the property for her horse boarding business. The property is improved with a barn, riding ring, a small residence and pastures divided into five paddocks, however, no buildings lie in the part taken. Improvements to the property to be taken include fencing, shade trees, a driveway and a part of the eastern most pasture paddock.
- Parcel 132, 6555 81st Street is owned by Frederick and Florence Van Antwerp. The parcel is 4.39 acres in size and zoned A-1, Agricultural, up to one unit per five acres and lies on the northeast corner of 66th Avenue and 81st Street. The County acquired a 0.99-acre parcel along 66th Avenue to be

used as right-of-way. The parcel is leased by B&B Farms, Inc. which operates the Country Side Family Citrus store on the adjacent parcels to the east and are not involved in the take. There are no improvements on the property, but the site has been the location as part of a corn maze in years past. B&B Farms, as tenants, are entitled to notice and possible damages due to the take.

Both B&B Farms and Empire Equine have been sent notice of the County's intent to take part of the property subject to their respective leases. Both tenants have also been sent notice of their right to claim business damages to the businesses they operate on the properties. In order to make a claim for business damages, the tenant would have to provide the County with written documentation of their claim by providing financial records, tax returns and other documents supporting the loss to their business.

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 the proposed alignment in front of the two properties. A copy of the Corridor Study is available for review at the County Commission Office or the Office of the County Attorney.

Neither property owner is represented by an attorney at this time. 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 take title to the properties free and clear of any lease. 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 each lease holder.

Acquisition of the lease hold to these parcels is important as it provides needed clear title to the right-of-way for the expansion of 66th Avenue. The attached Resolution of Necessity with copies of the sketches and legal descriptions of the needed lease holds are attached to this memorandum and provides for the following:

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

FUNDING: There is no impact to County funding with the Resolution of Necessity.

RECOMMENDATION: Staff recommends that the Board approve the Resolution of Necessity and authorize staff to proceed with the necessary lease hold acquisition through the County's power of eminent domain.

Attachments: Proposed resolution w/Parcel sketches and legal description of lease holds to be taken