



Office of Attorney's Matters 11/08/2016
**INDIAN RIVER COUNTY
ATTORNEY**

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MEMORANDUM

TO: Board of County Commissioners

THROUGH: Rich Szpyrka, Public Works Director

FROM: William K. DeBraal, Deputy County Attorney *WKB*

DATE: November 1, 2016

SUBJECT: Jenkins vs. IRC - Unconditional Offer for a parcel of property located on the south side of 53rd Street west of Old Dixie Highway

I. INTRODUCTION

The following information is submitted for consideration by the Board of County Commissioners (BCC) in approving an Unconditional Offer for acquisition of a slope easement associated with the construction of 53rd Street west of Old Dixie Highway (hereinafter referred to as "Project"), in Indian River County. The limits of the 53rd Street Project are from the intersection of Indian River Boulevard west to 58th Avenue.

II. PROJECT PURPOSE AND CHRONOLOGY

The Project consists of constructing 53rd Street into a four-lane road with bridges, turn lanes, improved drainage, sidewalks and signalization. The project also includes roadway signing and pavement marking items.

The Estate of William and Carlyne Jenkins, (Jenkins) owns two adjacent parcels of property that lie on the south side of 53rd Street west of Old Dixie Highway and east of the Waterway Village development. The two parcels have a combined size of 27.63 acres. These roughly rectangular - shaped parcels are zoned A-1, Agricultural, up to 1 unit per five acres. The underlying future land use is C/I Commercial Industrial. The parcels are undeveloped and were the site of the former

APPROVED FOR 11-8-16
B.C.C. MEETING - REGULAR AGENDA

COUNTY ATTORNEY

Indian River Co.	Approved	Date
Admin.		
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Budget		
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Risk Mgr.		

Jenkins sand mine. The property is in the process of being filled in and at this point, approximately 15 acres are submerged. The road construction plans for 53rd Street called for the County to acquire approximately 6.2 acres of submerged and upland property from the Jenkins for road right-of-way for the construction of 53rd Street. That purchase was completed in 1988. The County also needed a 2.86 acre Temporary Construction Easement (TCE) on the south side of the right-of-way parcel for access during the construction process. A sketch and legal description of the Permanent Slope Easement and an aerial of the two parcels owned by the estate are attached to this memorandum. Following the completion of the Project, it was discovered that the area used for a TCE was permanently covered with fill material in order to support the road. In hindsight, the County should have sought a Permanent Slope Easement when purchasing the needed right-of-way rather than a Temporary Construction Easement.

After discovering that the TCE was of a permanent nature, the Jenkins filed a lawsuit alleging that Indian River County had inversely condemned this portion of their property by placing fill material on the Jenkins property. That suit is pending in the Circuit Court and the County is represented by its outside eminent domain attorney, Bill Doney, Esq. To rectify the problem of placing fill permanently on the Jenkins Estate submerged property, the County needs to acquire a Permanent Slope Easement via eminent domain.

In order to provide for the lateral support for the 53rd Street Extension and to harmonize the roadway with abutting lands, the County needs to acquire a Permanent Slope Easement on, over and under the TCE parcel. This slope easement can be used by the County to permanently place or install soil, sand and other fill materials over the easement area in order to provide lateral support and to prevent the washout or erosion of the 53rd Street roadway. By acquiring the Permanent Slope Easement, the County will have the permanent right to enter the easement area in order to repair, replace and maintain the easement area and the materials placed thereon. The Jenkins, their heirs, successors and assigns, will have full use of the easement area but they would be permanently prohibited from removing or interfering with the operation, functioning, maintenance or repair of the fill materials or improvements placed on the easement area by County.

In order to obtain the needed slope easement for the 53rd Street improvements, the County needs to file an action in eminent domain, naming the Jenkin's Estate as owner of the property. The Board took the first step in that process at its meeting of March 15, 2016, by approving a Resolution of Necessity. That Resolution declares:

- It is 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

The next step in the eminent domain process is to make an Unconditional Offer to the Jenkins Estate for purchase of the needed slope easement. The Unconditional Offer must be based on an appraisal of the property. The County has retained the services of Glen Spivey, an appraiser experienced in eminent domain appraisals for both private landowners and government entities. In order to assist Mr. Spivey in forming his opinion of value, the County has retained engineer Brian Good of Kimley-Horn and Associates and land planner Michael Houston. After review of

comparable sales, the engineer's and land planner's reports, Mr. Spivey has concluded the value of the needed slope easement to be \$125,000.00.

In comparison, the appraiser hired by the Jenkins Estate valued the 2.86 acre parcel at \$466,800.00 for a fee simple taking of the property, rather than the Permanent Slope Easement.

The Board must now decide the amount of the Unconditional Offer it must make to the Jenkins Estate for purchase of the Permanent Slope Easement interest in the property.

The Unconditional Offer should be at least equal to the appraised value. The offer sets the basis for calculation of attorney's fees and future negotiations for purchase of the slope easement whether at settlement discussions, mediation or at trial. In his appraisal, Mr. Spivey took into account sales of similarity zoned parcels and also gave the County credit for the amount of fill already placed on the Jenkins Estate property.

The Jenkins Estate is represented by attorney Robert Gorman of the law firm of Robert J. Gorman, PA in Ft. Pierce. Upon approval of this Unconditional Offer, the County will send Mr. Spivey's appraisal report and the offer letter to the Jenkins Estate. If the offer is not accepted, the County will file a counter suit in eminent domain and attempt to negotiate a Stipulated Order of Take for the slope easement. The parties will then attend a mediation conference in an attempt 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 the Jenkins Estate.

III. FUNDING

Although not currently budgeted, funds for this expenditure are available through a budget amendment from Traffic Impact Fees/District II/Cash Forward-Oct 1st. to Traffic Impact Fees/District II/ROW/53rd Ave/58th St to US 1, Account # 10215241-066120-02025.

IV. RECOMMENDATION

Staff recommends that the Board approve making an unconditional offer for the Permanent Slope Easement to the Jenkins Estate in the amount of \$125,000.

Attachments:

Permanent Slope Easement legal description, aerial and TCE

Copies to Rich Szpyrka
 Bill Doney, Esq.