



Office of *Attorney's Matters 06/13/2017*
INDIAN RIVER COUNTY
ATTORNEY

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MEMORANDUM

TO: Board of County Commissioners

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

FROM: William K. DeBraul, Deputy County Attorney

DATE: June 9, 2017

SUBJECT: Resolution Authorizing the Florida Department of Transportation to Acquire Right-of-Way for the State Road 60/43rd Avenue Project and Use the Mermaid Carwash and Lennie's Lounge Parcels as Mitigation and for Cure Plans

In June 2015, the County and the Florida Department of Transportation (FDOT) entered into a County Incentive Grant Program Locally Funded Agreement (Incentive Agreement) whereby FDOT would acquire the needed right-of-way for the SR 60/43rd Avenue intersection improvements with the cost of acquisition to be split equally between the parties. Prior to entering into the Incentive Agreement, the County purchased the Mermaid Carwash owned by Timothy and Joshana Tynes on December 16, 2008. The County leased the property back to the Tynes with the lease ending on August 31, 2017. The County acquired the carwash site to use the 0.47 acre property as a possible cure plan parcel, dividing the lot between the Cumberland Farms convenience store to the south and the Szechuan Palace restaurant to the north. The FDOT is in the process of finalizing appraisals, making good faith offers and negotiating with Cumberland Farms and the Szechuan Palace for rights-of-way needed on 43rd Avenue.

In 2008, the County also purchased the old Lennie's Lounge located at 1959 43rd Avenue. The building has since been demolished and the 43rd Avenue right-of-way cut out of the parcel. The owner of the property that comprises the Mobil gas station and convenience store to the north of the Lennie's Lounge remainder has expressed interest in acquiring the Lennie's remainder parcel. The landowner, Paradise Central, Inc., (Central) is a locally owned corporation. The current plans for the SR 60/43rd Avenue expansion shows right-of-way needed from Central on both SR 60 and 43rd Avenue. Central's gas tanks will be impacted by the take and must be moved. Central has received an offer from FDOT that basically takes the entire property. Central is not receptive to the entire take as it has a long term lease on the property with a company out of Hialeah, FL. The Hialeah company in turn leases the gas pumps and convenience store to a local family that runs the store and station. Thus, three separate entities are making a profit from the one parcel of property.

Central's owners have weighed the benefit of receiving compensation for a full take versus the taxes it would pay as a result of the take and has decided to try to remain at the location and keep the three businesses in operation. Central is interested in acquiring the Lennie's Lounge remainder as a new site for its underground fuel tanks. By relocating the tanks to the south side of the property, FDOT would take the right-of-way needed from the north and east side of the Central parcel and

Central contends it will still have enough land to operate the gas station and convenience store in their present locations.

Under the Incentive Agreement, FDOT is responsible for devising cure plans and negotiating the right-of-way acquisitions. In order for FDOT to negotiate cure plans with Cumberland, Szechuan Palace and Central using the County owned Mermaid Carwash and Lennie's Lounge sites, permission must be obtained from the Board of County Commissioners. The County's consent would be given in the accompanying resolution giving FDOT permission to use the parcels in negotiating damages and formulating cure plans. The resolution allows FDOT to use the parcels in negotiations but does not give authority for them to convey the parcels without County approval. FDOT has already ordered appraisals of the Lennie's and Mermaid sites and is negotiating with Paradise, Cumberland Farms and the Szechuan Palace.

FUNDING. There is no impact to County funds associated with this Resolution.

RECOMMENDATION. Staff recommends the Board of County Commissioners approve the Resolution permitting FDOT to use the County owned Mermaid Carwash and Lennie's Lounge sites in negotiations with the neighboring property owners to mitigate damages and formulate cure plans and authorize the Chairman to execute the resolution.

Attachment: Resolution for FDOT to Obtain SR 60/43rd Avenue ROW

Copy to: Robin Brisebois, FDOT
3400 West Commercial Boulevard
Fort Lauderdale, Florida 33309