



Office of *Attorney's Matters 7/11/2017*
INDIAN RIVER COUNTY
ATTORNEY

Dylan Reingold, County Attorney
William K. DeBaal, Deputy County Attorney
Kate Pingolt Cotner, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

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

DATE: July 5, 2017

SUBJECT: Approval of Expert Witness Fees for Laurel Homes 66th Avenue Parcel

On June 16, 2015, the Board of County Commissioners of Indian River County approved a mediated settlement agreement with Laurel Homes, Inc. to purchase 3.53 acres of property needed for construction of 66th Avenue between 4th Street and State Road 60. The property purchased lies on 66th Avenue between 16th Street and the Main Relief Canal. The construction of 66th Avenue bifurcated the 22 acre property. In attendance at the mediation were the County's outside eminent domain counsel Bill Doney, former County Administrator Joe Baird and Deputy County Attorney Bill DeBaal. The parties reached a settlement to purchase the property for \$1,300,000.

The parties did not reach settlement on the issue of the costs and expert witness fees. The matter has lingered over the past two years since the main suit was settled. Unfortunately there is no dead line or statute of limitations in which to seek expert fees and costs in an eminent domain case. The judge has set this matter for a docket call on July 24th, 2017 and the County's outside attorney has been negotiating the matter with the attorney for Laurel Homes. As you recall the condemning authority is obligated by statute to pay the opposing party's expert witness fees and court costs.

A breakdown of the expert fees is compiled on the table accompanying this memorandum.

If the Board does not approve of the expert witness fees, they will be determined by the court after the docket call of July 24, with the County responsible for paying for the opposing parties attorney's fees and any additional expert witnesses needed to testify as to the reasonableness of their fees. Additionally, the County would have to retain experts to testify in a fee hearing and pay outside counsel to prepare for and attend the fee hearing. Our experts have reviewed the proposed settlement amounts and find them to be reasonable.

Please be advised that the attorney for Laurel Homes, Mark Leavitt, is seeking attorney's fees prior to the date the suit was filed. He contends that a good faith offer to purchase the property was approved by the Board and made to Laurel Homes early in negotiations in the late 1990s or early 2000s. Staff and outside counsel dispute this argument as the only unconditional offer was approved and made by the Board on February 2, 2011 in the amount of \$745,000.

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Funding. Funding for this expenditure is not currently budgeted. A budget amendment from Optional Sales Tax/Cash Forward can fund the \$121,964.30 needed from acct # 31521441-066120-06021 – Optional Sales Tax/ROW/66th Avenue- 12th Street to SR 60.

Recommendation. The County Attorney's Office recommends that the Board approve the Laurel Homes experts' costs and fees in the amount of \$121,964.30.

Attachment: Expert Witness Fees Table

Copies to: Bill Doney, Esq.
Mark Leavitt, Esq.