



Office of

Attorney's Matters 12/17/2024

**INDIAN RIVER COUNTY
ATTORNEY**

Jennifer W. Schuler, County Attorney
Susan J. Prado, Deputy County Attorney
Christopher A. Hicks, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

THROUGH: John A. Titkanich, Jr., County Administrator

FROM: Susan J. Prado, Deputy County Attorney

DATE: December 9, 2024

SUBJECT: Counteroffer for a Parcel of Right-Of-Way Located at
7950 66th Avenue, Vero Beach, FL 32967 Parcel 128
Owned by Orville L. Ganbin, III, and Kelly L. Jackson

On December 7, 2021, the Board of County Commissioners extended an unconditional offer to Orville L. Ganbin, III and Kelly L. Jackson (Ganbin/Jackson) to purchase property needed for right-of-way at the northern end of the 66th Avenue Improvement Project, Phase II. You may recall Ganbin/Jackson own a 2-acre parcel of property that lies on the east side of 66th Avenue between 77th and 81st Streets. This site is rectangular in shape. The property is located outside the urban service boundary and is zoned A-1, Agricultural, up to one unit per five acres and is improved with a single-family residence. The County needs a 0.08-acre triangle shaped parcel to be used as right-of-way for the 66th Avenue project. The right-of-way parcel has 210.02 feet of frontage along 66th Avenue and is 25 feet wide at its deepest point on the north property line. An aerial photo of the parent parcel and sketch of the part to be taken are attached to this memorandum. The Ganbin/Jackson parcel is the only unresolved case in the 66th Avenue project.

Staff had an updated appraisal of the property completed on May 26, 2022, by Armfield and Wagner. That appraisal establishes the value of the partial taking to be \$5,400.00 which equates to a land value of \$67,500 per acre, plus \$3,000 for the estimated value of improvements placing the just compensation for the parcel at \$8,400. A copy of the appraisal is available for review at the Board of County Commissioners' office. At the Board's meeting on December 21, 2021, an unconditional offer of \$12,000 exclusive of attorney's fees and

costs was approved.

Staff and outside counsel have been negotiating with Gambin/Jackson and their attorneys, and relayed the Board's unconditional offer of \$12,000 to them. The Board is required to make an unconditional offer to Ganbin/Jackson prior to filing suit in eminent domain. Suit was filed by the County's outside counsel, Bill Doney, on February 17, 2022. Ganbin/Jackson hired attorneys and experts which the County is required to pay pursuant to Florida Statute. Ganbin/Jackson had their own appraisal report dated June 7, 2022, that provided for full compensation in the amount of \$81,400 for the area of taking together with severance damages. The disparity between the appraisal prepared on behalf of the County and the property owners' appraisal is that the County's appraiser found no severance damages while the appraiser for the property owners is of the opinion that the owners' remainder property will be damaged or devalued by 20% primarily due to the property now being located on a 4-lane roadway. A mediation was held on April 10, 2024, that resulted in an impasse. The matter is now set for a jury trial in March of 2025. Negotiations between the attorneys continued after the mediation. Those conversations ended with a final counteroffer from Ganbin/Jackson in the amount of \$50,000.00 in full and final settlement of all claims for full compensation they may have against the County. In addition to the payment of the settlement proceeds, as part of the proposed settlement, the County has agreed to provide three (3) driveway aprons (one 24 feet and two 12 feet) beginning at the paved road and ending at the right-of-way line. Also, the County would provide 20 loads of fill to be deposited on the property for Ganbin/Jackson to spread. Ganbin/Jackson also seeks permission to pipe down to the canal to the south of the property at their own expense in order to improve drainage conditions at their property. County staff is in agreement with these non-monetary concessions.

As noted, pursuant to Florida law, the County is required to pay for the attorney's fees and costs of a property owner in eminent domain proceedings. Statutory attorney's fees are \$12,540.00. Attorney's fees are calculated as thirty-three (33) percent of the difference between the initial offer letter and the final settlement amount or jury verdict. The attorney is not seeking fees associated with the non-monetary compensation that the property owner is receiving. The property owners' costs and expert witness fees are as follows:

- Appraisal - \$4700.00
- Engineering Analysis - \$5000.00.

After review of the file and discussion with staff, it is recommended that the Board approve the Ganbin/Jackson counteroffer in the amount of \$50,000.00 as well as payment of the expert witness fees, attorney's fees and costs associated with the settlement for a total of \$72,240.00. The settlement is recommended primarily in order to avoid the additional costs and attorneys' fees that will soon be incurred for depositions, additional attorneys' fees, expert witness fees, trial, and to eliminate the possibility of an adverse jury verdict.

Funding: Funding in the amount of \$72,240.00 for the acquisition will be budgeted and

available from Traffic Impact Fees/District I/ROW/66th Ave/69th Street – 85th Street, Account # 10215141-066120-16009 for FY24/25.

Account Description	Account Number	Amount
Traffic Impact Fees/District 1 Roads/ROW/66 TH Ave/69 th Street – 85 th Street	10215141-066120-16009	\$72,240.00

Recommendation: Staff recommends the Board approve the settlement of the eminent domain case for the necessary right-of-way from Ganbin/Jackson in the amount of \$72,240.00, inclusive of attorney’s fees and costs, in addition to the non-monetary benefits listed out above. As well as authorize the County Attorney’s Office or outside counsel to execute any documents needed to settle the lawsuit.

Attachments: Aerial photo/Sketch