



*Office of*

Attorney's Matters 6/06/2023

# 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. DeBraal, Deputy County Attorney

DATE: May 19, 2023

SUBJECT: Approval of Mediation Settlement Agreement for a Parcel of Right-Of-Way Located at 6600 65<sup>th</sup> Street, Vero Beach, Owned by Harish and Deepti Sadhwani

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Harish and Deepti Sadhwani own a 19.54 acre parcel of property located at 6600 65<sup>th</sup> Street. The property is located at the northwest corner of 66<sup>th</sup> Avenue and 65<sup>th</sup> Street. This site is rectangular in shape with 1,309 feet of frontage along 66<sup>th</sup> Avenue and is 652 feet deep. The property is located outside the urban service boundary and is zoned A-1, Agricultural, up to one unit per five acres. The property is improved with 3 strand barbed wire fencing and three flow wells. There are no structures on the property. The Sadhwanis purchased this property back in 2004 for \$760,000, or approximately \$38,895 per acre.

In order to accommodate the planned improvements to 66<sup>th</sup> Avenue, the County acquired approximately 7.86 acres from the Sadhwani property: 5.28 acres will be used for right-of-way and 2.58 acres will be used for a stormwater retention pond. The only site improvements lying within the area of take are fencing, a gate, artesian wells and some grading to provide drainage for the site. A copy of the sketch of the parent parcel, the part to be taken, and remainder are attached to this memorandum.

In October 2020, the County filed an Eminent Domain lawsuit against the Sadhwanis and on December 21, 2020, the judge entered an Agreed Order of Take for the 7.86 acres of property needed for the 66<sup>th</sup> Avenue road project and the County took possession of the right-of-way and pond site parcels after depositing \$314,264.00 into the registry of the Court. Some discovery has taken place in the lawsuit and the parties scheduled a mediation of the case on May 12, 2023. The mediation was attended by Drs. Harish and Deepti Sadhwani, Rohan Sadhwani, and their attorney, David Holloway, the mediator, Tony Rodriguez, Assistant

Public Works Director Kirstin Leiendecker, Assistant County Attorney Susan Prado, Land Acquisition Specialist Andrew Sechen, Outside Counsel Bill Doney and myself.

The County recently updated its appraisal using Christopher Mafera of Real Estate Analysts, Inc. Mr. Mafera has testified as an expert witness in numerous eminent domain trials both for government entities and private landowners. His appraisal establishes the value of the part taken at \$379,500 and valued the entire remainder parcel at \$644,400. On the other side, the Sadhwani's appraiser valued the partial take at \$1,803,725. The appraiser establishes a land value of \$100,000 per acre for the 7.8566 acres or \$785,660. When the value of the improvements is added in (trees, wells, fencing) of \$80,890, he claims it results in a value of the part taken as \$866,550. He then values the damages due to the reduction in size and change of shape of the property in the amount of \$117,280. A cost to cure of \$819,895 is then added, opining that the entire remainder property would have to be filled with 90,000 cubic yards of soil in order to prevent flooding that will supposedly be caused by the new retention pond and elevated new roadway. Thus, he states the total compensation to the Sadhwani's should be \$1,803,725.

At the beginning of a mediation, the attorneys for the parties gave an opening statement. Mrs. Sadhwani then asked to speak. She explained that they had bought the nearly 20-acre property to be used as a family compound. When it was nearing the time for the parents to retire from their medical practice, the parcel would be divided into four lots with the parents taking one lot and the other three would be given to their children and the family would all build a home and live on the property. In support of this assertion, Mrs. Sadhwani stated that they had recently purchased the former Calico Corners building on State Road 60 and remodeled it into a medical office for their daughter and son-in-law as they are both dermatologists. Rohan Sadhwani, who attended the mediation, is a financial analyst in Vero Beach and their other daughter is finishing her medical training and plans to return to the area also. Mrs. Sadhwani concluded that because of the County's partial take of the property, two lots were lost and the plan for a family compound was ruined.

The County's challenge in the mediation, and later in court, was to limit the exposure to a large jury verdict if the jury believed that some or all of the fill the Sadhwani's expert was necessary. In the report of the County's engineer, \$71,800 was needed to create and grade a swale at the back of the slope of the road on the Sadhwani's property to provide better drainage in the after condition. In order to avoid the fill and drainage issue, County staff and outside counsel agreed that purchasing the entire remainder parcel would be an advantage for three reasons:

1. The exposure to the cost to cure due to the 90,000 cubic yards of fill for \$819,895 would be eliminated.
2. The County would have 11.86 acres of property it could sell or use for another purpose.
3. Keeping in line with the Board's direction to appeal to the property's owners' wishes, if possible.

Since the Sadhwani's expressed a willingness to sell the entire remainder parcel as their preference, staff pursued this direction at mediation.

As stated above, the County's appraiser valued the 11.86-acre remainder parcel at \$644,400 or \$54,333 per acre. After six rounds of mediation, the parties agreed to a purchase price of \$58,000 per acre or \$1,133,320 for the entire 19.54-acre parcel. The County would get credit for the \$314,264 already deposited making the purchase price of the remainder \$819,056 going to the Sadhwanis. If approved, the Agreement would proceed to a real estate closing with the County receiving a deed to the property so as to wipe out the Sadhwani's statutory right of first refusal to buy back the remainder parcel if the County were to sell, trade or lease the remainder parcel in the future

As you are aware, in an eminent domain proceeding, the condemning authority is responsible for payment of the landowner's reasonable expert witness costs and attorney's fees. In this case, the Sadhwani's originally sought \$105,000 for expert witness costs for the appraiser, engineer, land planner and arborist. After careful review of the invoices, that amount was compromised to \$63,100. The attorney's fees in an eminent domain case are set by statute and are measured by the amount of benefit achieved for the landowner. The benefit achieved is measured by the difference between an unconditional offer made by the government and the final price paid to the client. In this case, the County made an unconditional offer to the Sadhwanis on July 23, 2020 of \$516,156. The benefit obtained for the client was  $\$1,133,320 - \$516,156 = \$617,164$ . The statute provides for a fee of 33% for the first \$250,000 of benefit and 25% of the benefit thereafter. So  $33\% \times \$250,000 = \$82,500$  and  $25\% \times \$367,164 = \$91,791$  for a total fee of  $\$82,500 + \$91,791 = \$174,291$ .

Taking into account of the credit for the \$314,264 already paid into the registry of the court, the County's additional amount due under the Agreement to the County in this matter is  $\$819,056 + \$174,291 + \$63,100 = \$1,056,447.00$ .

**Funding:** Funding in the amount \$1,056,447 is budgeted and available in Traffic Impact Fees/District 2/ ROW/66<sup>th</sup> Ave/49<sup>th</sup> to 69<sup>th</sup> Street, Account # 10215241-066120-07806.

**Recommendation:** Staff recommends the Board approve the Mediation Settlement Agreement with the Sadhwanis.

Attachments: Aerial photo, Sketch and Legal Descriptions, and Mediation Settlement Agreement