

MANATEE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT	Offer of Judgment in the case of <u>Manatee County v. U-Store-It, Inc., et al.</u> , Case No. 1999-CA-2301; parcels 27, 27-1, 27-2; property owner 7-Eleven, Inc.	TYPE AGENDA ITEM	Consent
DATE REQUESTED	April 17, 2001	DATE SUBMITTED/REVISED	April 12, 2001
BRIEFINGS?/WHO?	N/A	CONSEQUENCES IF DEFERRED	Offer of Judgment must be responded to by April 25, 2001
DEPARTMENT/DIVISION	County Attorney's Office	AUTHORIZED BY TITLE	Tedd N. Williams, Jr., County Attorney
CONTACT PERSON TELEPHONE/EXTENSION	Michael H. Rosen, Assistant County Attorney Ext. 3750	PRESENTER/TITLE TELEPHONE/EXTENSION	Michael H. Rosen, Assistant County Attorney Ext. 3750 <i>MR</i> 4/12/01
ADMINISTRATIVE APPROVAL	<i>JRW</i> 4/12/01		

ACTION DESIRED

INDICATE WHETHER ¹REPORT or ²DISCUSSION, ³FORM OF MOTION, or ⁴OTHER ACTION REQUIRED:

FORM OF MOTION

Reject the attached Offer of Judgment by Defendant 7-Eleven, Inc. to Manatee County for \$12,500.00, plus certain conditions in the eminent domain case of Manatee County v. U-Store-It, Inc., et al., Case No. 1999-CA-2301; Parcels 27, 27-1 and 27-2.

Approve an Offer of Judgment pursuant to applicable Florida Statutes and Rules of Civil Procedure in the same case by Manatee County to Defendant 7-Eleven, Inc., in the amount of \$7,000.00. to settle all claims exclusive of attorney's fees and costs with the condition that the offer is subject to apportionment proceedings pursuant to Florida Statute §73.101.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy.)

Florida Statute 73.032 and Florida Rule of Civil Procedure 1.442(c)(2)(D), provides for the Landowner/ Defendant to make a "reverse" Offer of Judgment to the condemning authority in cases where the offer is under \$100,000.00. Florida Statute 73.032 and Florida Rule of Civil Procedure 1.442(c)(2)(D), allows condemners to make an Offer of Judgment to Defendants in eminent domain cases regardless of the amount.

APPROVED IN OPEN SESSION

APR 17 2001

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

BC20010417DOL069

BACKGROUND/DISCUSSION

The subject property is improved with a 7-Eleven gas station at the northwest corner of Lockwood Ridge Road and Tallevast Road. The County acquired Parcels 27, 27-1 and 27-2. Parcel 27 consists of a fee taking of 431 square feet. Parcel 27-1 is a temporary easement consisting of 133 square feet. Parcel 27-2 is a temporary construction easement consisting of 659 square feet. The property is zoned NC-M, Neighborhood Commercial Medium District and the land use designation is RES-9. The takings are from the front of the property; grass ground cover is the only improvement within the parcels acquired.

The County's appraiser, Dan Richardson, PhD, MAI, AICP, appraised the taking of the land and improvement for all of the parcels at \$2,900.00. He determined that there were no damages to the remainder property as a result of the takings. The County has requested, but has not received the owner's appraisal report. The owner's attorney made an offer of judgment to the County for the sum of \$12,500.00 as a "reverse" offer of judgment. A reverse offer of judgment is provided pursuant to Florida Statute 73.032 and allows a landowner to make an offer to a condemning authority in cases under \$100,000.00. The failure of the County to obtain a verdict under the offer amount will result in the County being obligated to pay the reasonable attorney's fees on an hourly basis for the landowner's counsel. Their offer is conditioned upon the following: 1) restoration of driveway to the width, condition and location that existed prior to the taking; 2) the County agrees not to store any materials in the temporary construction easements; and 3) that the County will ensure continuous access to 7-Eleven's property during the use of parcels 27-1 and 27-2.

Based on the recommendation of the Land Acquisition Department, the County Attorney's Office and the County's consulting real estate appraiser, the defendant's offer should be rejected because it is without sufficient justification. Specifically, a review of the market by the County's appraiser reveals that there are no comparable sales to support the owner's offer. It is recommended, however, that the Board approve an offer of judgment by the County in the amount of \$7,000.00 to the landowner, subject to apportionment proceedings. In the event the County obtains a verdict below the amount offered, the owner's expert will not be paid for the time they expended 30 days after the offer is received.

HAS COUNTY ATTORNEY REVIEW BEEN REQUESTED? Indicate "NO" or "YES" @ right. (If "NO," proceed to 1) below; and if "YES," proceed to 2) below) N/A

1) IF "NO" TO ABOVE,

A) PLEASE EXPLAIN BELOW: (see also following section 1B) re: contract, agreement, lease, etc.:

This is a County Attorney item.

B) IF A CONTRACT, AGREEMENT, LEASE OR OTHER DOCUMENT WAS PREVIOUSLY APPROVED, STATE YEAR OF LAST USE @ RIGHT:

2) IF "YES" TO FIRST QUESTION IN THIS SECTION,

A) HAS ENTIRE MATTER, OR ONLY A PORTION, BEEN REVIEWED? IF ONLY A PORTION, WHICH PORTION?

B) HAVE ALL COMMENTS/SUGGESTIONS RAISED BY COUNTY ATTORNEY BEEN ADDRESSED/INCORPORATED; IF NOT, PLEASE EXPLAIN. A COPY OF FINAL COUNTY ATTORNEY MEMO RE THIS MATTER **MUST BE ATTACHED (if comments were verbal, so indicate.)**

ATTACHMENTS: (List in order as attached)		INSTRUCTIONS TO BOARD RECORDS:	
Offer of Judgment from landowner 7-Eleven, Inc.			
COST	If the County's offer is accepted by the landowner, the cost to the County will be \$7,000.00, exclusive of attorney's fees and costs.	SOURCE (ACCT# & NAME)	309-6009360-561000
COMMENTS	AMT./FREQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT)		

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

**MANATEE COUNTY, a political
subdivision of the State of Florida,**

Petitioner,

v.

U-STORE-IT, INC., et al.,

Defendants.

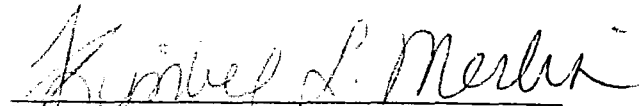
Case No.: CA 99-2301
Parcel Nos.: 27, 27-1, 27-2

**Defendant, 7-Eleven, Inc.'s
Offer of Judgment to Manatee County**

COMES NOW the Defendant, **7-Eleven, Inc.**, by and through its undersigned counsel, pursuant to Florida Rule of Civil Procedure 1.442 and Florida Statutes Section 73.032, and hereby makes its offer of judgment as to Parcel 27, 27-1 and 27-2 to Petitioner, **Manatee County**, offering to settle all its pending claims with **Manatee County** as to Parcels 27, 27-1 and 27-2, exclusive of attorneys' fees and costs, for the total amount of TWELVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$12,500.00). Pursuant to Florida Statutes Section 73.032(4)(a)5 and Florida Rule of Civil Procedure 1.442(c)(2)(D), this offer is conditioned on the following:

1. **Manatee County** shall not use Parcels 27-1 and 27-2 for the storage of equipment or materials.
2. **Manatee County** shall ensure continuous access to **7-Eleven, Inc.'s** property during its use of Parcels 27-1 and 27-2.
3. **Manatee County** shall restore the subject property's two (2) driveways to the same location, width and condition, that existed before the taking and road project.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail this 27th day of March, 2001, to Michael H. Rosen, Esquire, Assistant County Attorney, Manatee County Attorney's Office, Post Office Box 1000, Bradenton, Florida 34206.



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