

# MANATEE COUNTY GOVERNMENT AGENDA MEMORANDUM

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<b>SUBJECT</b>	Recommended eminent domain settlement; 63 <sup>rd</sup> Avenue road improvement project; parcel 149/800 (owned by Leslie Handshoe and Patricia A. Handshoe)	<b>TYPE AGENDA ITEM</b>	Consent
<b>DATE REQUESTED</b>	September 4, 2001	<b>DATE SUBMITTED/REVISED</b>	August <u>20</u> , 2001
<b>BRIEFINGS?/WHO?</b>	None	<b>CONSEQUENCES IF DEFERRED</b>	
<b>DEPARTMENT/DIVISION</b>	County Attorney's Office	<b>AUTHORIZED BY TITLE</b>	Teddy N. Williams, Jr., County Attorney
<b>CONTACT PERSON TELEPHONE/EXTENSION</b>	Michael H. Rosen, Assistant County Attorney (for outside counsel); extension 3750	<b>PRESENTER/TITLE TELEPHONE/EXTENSION</b>	Michael H. Rosen, Assistant County Attorney (for outside counsel); extension 3750 <span style="float: right;">(M)</span>
<b>ADMINISTRATIVE APPROVAL</b>	<i>Jmw 8/20/01</i>		

## ACTION DESIRED

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

Form of motion - Approval of a settlement with landowners Leslie and Patricia A. Handshoe as to the taking of parcel 149/800, for a payment by the county of the aggregate sum of \$27,541.89 inclusive of the value of the land taken, severance damages, costs to cure, attorney's fees and expert's fees, in the eminent domain matter of Manatee County v. The T. Ralph Taylor, Jr. Family Limited Partnership, et al., Case No. 2001-CA-1044 (63<sup>rd</sup> Avenue road improvement project).

**APPROVED IN OPEN SESSION**

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

Chapters 73, 74 and 127, Florida Statutes.

SEP 04 2001  
**BOARD OF COUNTY COMMISSIONERS**  
**MANATEE COUNTY, FLORIDA**

## BACKGROUND/DISCUSSION

The County is represented in this matter by outside counsel, Mr. Mitchell O. Palmer.

Parcel 149/800 on the 63<sup>rd</sup> Avenue project is located at 704 63<sup>rd</sup> Avenue West. The property is improved with a single-family residence. The County undertook a strip type taking encompassing 154 square feet in fee, and a rectangular-shaped taking consuming 150 square feet as a permanent drainage easement. Before the taking, the overall parent tract contained 9,225 square feet. Improvements located within the area of the taking included sod and numerous trees which served as a visual barrier between the residence and 63<sup>rd</sup> Avenue.

The County's appraiser (Ms. Shawn Wilson) appraised the land taken at \$350.00 (or \$2.00 per square foot) and the value of the improvements within the taking at \$225.00. In addition, she valued the permanent drainage easement at \$300.00. Finally, Ms. Wilson opined that the remainder property suffers from severance damages in the sum of \$8,675.00. The severance damages are attributable to the complete elimination of the vegetative buffer that previously existed as well as changes to the overall external characteristics of the property. Thus, the total of

**BC20010904DOC021**

Ms. Wilson's appraised value was \$9,550.00.

The owners' retained appraiser (Mr. Chuck Haynes) valued the land taken at \$500.00 (or \$3.00 per square foot) and the value of the improvements within the taking at \$2,300.00. In addition, he valued the permanent drainage easement at \$400.00. Mr. Haynes also opined that the remainder suffers from severance damages, in the sum of \$9,300.00. Finally, Mr. Haynes recommended a partial cure totaling \$8,600.00, which cure is further discussed below. Thus, Mr. Haynes's total appraised value was \$21,100.00.

In addition to the elimination of the vegetative buffer, one of the more significant effects of the County's taking is that the owners' existing driveway connection onto 7<sup>th</sup> Street West will be eliminated. The reason for this is that the limits of the curb return for the southwest corner of the intersection of 63<sup>rd</sup> Avenue and 7<sup>th</sup> Street West extend beyond the existing driveway. The practical effect of this is that the driveway can no longer be utilized in its present location.

The owners' retained engineer (Mr. David May) has proposed a cure which involves the elimination of the Handshoes' existing driveway which is located on the north side of the existing carport and the construction of a new 12 foot wide driveway to extend from the south end of the carport to 7<sup>th</sup> Street West - with a new connection onto 7<sup>th</sup> Street West just outside the limits of the 63<sup>rd</sup> Avenue road project. This proposed cure necessitates the removal of an additional existing tree and the relocation of a propane tank. Mr. May's proposed cure totals \$8,600.00, as referenced above, and constitutes the bulk of the difference between the parties positions.

Negotiations as between Attorney Palmer and counsel for the owners (Mr. Paul Blucher) has led to the following recommended settlement:

- value of the land taken ..... \$ 350.00 (per the County's appraisal report)
- value of the drainage easement ..... \$ 300.00 (per the County's appraisal report)
- value of the improvements taken ..... \$ 2,300.00 (per the owners' appraiser)
- severance damages ..... \$ 9,300.00 (a \$625 increase above the County's damage opinion)
- cost to cure ..... \$ 7,350.00 (\$1,250 less than Mr. May's value estimate)
- Total Settlement ..... \$ 19,600.00

Finally, upon factoring the owners' attorney's fee of \$3,316.50 (which fee is set by statute), the appraiser Mr. Haynes's fee of \$3,464.00, and the engineer Mr. May's fee of \$1,161.39, the aggregate settlement sum becomes \$27,541.89. The experts' fees were reviewed by Mr. Palmer and are considered reasonable.

Note that the cure recommended by engineer May has been reviewed by the County's design consultant for the 63<sup>rd</sup> Avenue project (engineer Tom Fulton of Post Buckley Schuh & Jernigan). Mr. Fulton agrees with Mr. May's assessment that the cure is essential. Mr. Fulton has also opined that the projected cost of the cure as suggested by Mr. May is reasonable. Outside counsel Mitchell Palmer concurs in these opinions.

Finally, Mr. and Mrs. Handshoe are agreeable to binding themselves by court order to actually implementing the access-related cure as proposed by Mr. May.

The above-outlined settlement is recommended for approval by the County Commission. As is typical in these cases, by settling now, the County avoids the additional expenses inherent in further litigating this matter.

**APPROVED IN OPEN SESSION**

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HAS COUNTY ATTORNEY REVIEW BEEN REQUESTED? Indicate "NO" or "YES" @ right. (If "NO," proceed to 1) below; and if "YES," proceed to 2) below) Not applicable  
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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)

None

INSTRUCTIONS TO BOARD RECORDS:

None

COST \$27,541.89

SOURCE (ACCT# & NAME) 309-6001860-561000-6001860

COMMENTS None

AMT./FREQ. OF RECURRING COSTS  
(ATTACH FISCAL IMPACT STATEMENT) None

cc: Janet McAfee, Director, Project Management Department

Jim Staples, Manager, Land Acquisition Division

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