

**MANATEE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT	Eminent Domain; 17 th Street West (Memphis Road), Palmetto – Phase II (U.S. 41 to Business 41), Parcel 136 (Julius Jefferson, Deceased; Johnnie Lee Forte, Deceased; and James Edward Jefferson); Approval of Settlement	TYPE AGENDA ITEM	Consent
DATE REQUESTED	January 12, 2010	DATE SUBMITTED/REVISED	January 7, 2010
BRIEFINGS? Who?	N/A	CONSEQUENCES IF DEFERRED	
DEPARTMENT/DIVISION	County Attorney's Office	AUTHORIZED BY TITLE	Tedd N. Williams, Jr. County Attorney <i>TNW</i>
CONTACT PERSON TELEPHONE/EXTENSION	Rodney Wade/Sandi Murphy Ext. 3750	PRESENTER/TITLE TELEPHONE/EXTENSION	Rodney C. Wade Deputy County Attorney Ext. 3750 <i>R Wade</i>
ADMINISTRATIVE APPROVAL		<i>TNW 1/7/10</i>	

ACTION DESIRED
INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

FORM OF MOTION – Approval of a settlement with Julius Jefferson, Deceased; Johnnie Lee Forte, Deceased; and James Edward Jefferson, the landowners of Parcel 136.

This settlement includes full payment for the acquisition of the property (in the amount of \$21,000, less the County's previous deposit amount of \$12,150) subject to apportionment proceedings in accordance with Florida Statutes § 73.101, if any, in the eminent domain case of Manatee County v. Henry Lawrence, et al., Case No.: 2008-CA-1398, Parcel 136.

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

Article X, Section 6A of the Florida Constitution requires the payment of "full compensation" for the taking of private property for a public purpose. Florida Statutes §§ 73.091 and 73.092 also require the condemning authority to pay the owner's reasonable and necessary expert witness fees and costs and statutory attorney's fees to the owner's counsel based on a percentage of the benefit obtained or on an hourly basis when not otherwise provided for by statute.

APPROVED IN OPEN SESSION

JAN 12 2010

BACKGROUND/DISCUSSION

**BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA**

- Chapter 74, Florida Statutes, provides for possession and title in advance of entry of the final judgment. Manatee County previously acquired Parcel 136 from landowners Julius Jefferson, Deceased; Johnnie Lee Forte, Deceased; and James Edward Jefferson as part of the 17th Street West Road Improvement Project by Stipulated Order of Taking on May 16, 2008. The property is located on the southeast corner of 17th Street East and 1st Avenue East in Palmetto. It has an address of 98 17th Street East, Palmetto, Manatee County, Florida. Parcel 136 consists of an 849 sq. ft. strip taking from its 17th Street East frontage. The subject property is improved with a single-family residence with attached covered porch and open deck, shell driveway, stone sidewalk, landscaping, trees, shrub, and sod.

- Pursuant to the Stipulated Order of Taking, the County deposited \$12,150 into the Registry of the Court on May 30, 2008, which is the date Manatee County acquired ownership of the property. Pursuant to a motion and court order allowing withdrawal of funds, payment was then made by the Clerk of the Circuit Court to counsel for James Edward Jefferson for placement into an interest-bearing account.
- Summary of the County's and the landowner's appraisal reports stating the values of the property acquired:

	MANATEE COUNTY STIPULATED ORDER OF TAKING APPRAISAL	MANATEE COUNTY DATE OF DEPOSIT APPRAISAL	LANDOWNER JAMES EDWARD JEFFERSON DATE OF DEPOSIT APPRAISAL
Appraiser:	R & W Enterprises, Inc.	R & W Enterprises, Inc.	Calhoun, Collister & Parham, Inc.
Date of Value:	April 30, 2008	May 30, 2008	January 7, 2008
Land:	\$5,350(\$6.26/sq. ft.)	\$5,350(\$6.26/sq. ft.)	\$6,800 (\$8.00/sq. ft.)
Improvements:	\$6,400	\$6,400	\$4,600
Total Value of Land & Improvements Acquired:	\$11,750	\$11,750	\$11,400
Cost to Cure (Re-establish Water Service to Residence):	\$ 400	\$ 400	\$ 300
Damages (Reduced Setback):	<u>-0-</u>	<u>-0-</u>	<u>\$14,900</u>
Total Compensation:	<u>\$12,150</u>	<u>\$12,150</u>	<u>\$26,600</u>

- After receiving the Board of County Commissioners' approval, the County Attorney's Office served Defendants with an Offer of Judgment/Proposal for Settlement on September 9, 2008, in the amount of \$18,300. The additional amount over the appraised amount is to cover the contingency of post-judgment interest. The offer was exclusive of attorney's fees and costs and expired October 9, 2008.
- As a result of negotiations, the landowners agreed to settle as full compensation for the acquisition of the property in the amount of \$21,000 (less the previous Order of Taking Deposit paid in to the Registry of the Court in the amount of \$12,150).
- This settlement is exclusive of attorney's fees and costs and expert's fees and costs, if any. William S. Galvano, Esq., was appointed administrator ad litem for the deceased Defendants Julius Jefferson and Johnnie Lee Forte. Paul A. Blucher represents Defendant James Edward Jefferson. In accordance with Florida Statutes §§ 73.015 and 73.092, Manatee County will pay attorney's fees costs and reasonable expert fees and costs based upon apportionment proceedings in Circuit Court.
- The County's proposed settlement takes into account the relative strengths and weaknesses in the case and the estimated costs associated with further litigation as well as the value of the acquisition.
- Based on the foregoing, it is recommended that the Board approve the proposed Stipulated Final Judgment. It is requested that a check in the amount of \$8,850 be deposited into the Registry of the Court for proper distribution.

APPROVED IN OPEN SESSION

COUNTY ATTORNEY REVIEW

JAN 12 2010

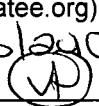
Check appropriate box

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

REVIEWED

Written Comments:

	<input type="checkbox"/> Attached <input type="checkbox"/> Available from Attorney (Attorney's initials:)
<input type="checkbox"/>	NOT REVIEWED (No apparent legal issues.)
<input type="checkbox"/>	NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)
<input checked="" type="checkbox"/>	OTHER: This is a County Attorney item.

ATTACHMENTS: (List in order as attached)		INSTRUCTIONS TO BOARD RECORDS:	
1. Aerial Map of Subject Property 2. Portion of Right-of-Way Map depicting Parcel 136 3. Proposed Stipulated Final Judgment as to Parcel 136		Forward one (1) approved copy of this Agenda Memo to Assistant County Attorney, Rodney C. Wade (rodney.wade@mymanatee.org). <i>Emailed 1/13/200</i> 	
COST:	\$21,000 (Property) - 12,150 (Initial Deposit) \$ 8,850	SOURCE (ACCT # & NAME):	323.6035261.561000/6035261.0003 2004 Transportation Bonds
COMMENTS:		AMT./FREQ. OF RECURRING COSTS:	
		(ATTACH FISCAL IMPACT STATEMENT)	

cc: Ron Schulhofer, Director, Public Works Department
 Timothy A. Hochuli, P.E., Deputy Director, Project Management Division
 Walter Sowa, Project Manager, Project Management Division
 Charlie H. Bishop, Interim Director, Property Management Department
 Joaquin Servia, Manager, Property Acquisition Division
 Barbara Carter, SR/WA, Real Property Supervisor, Property Acquisition

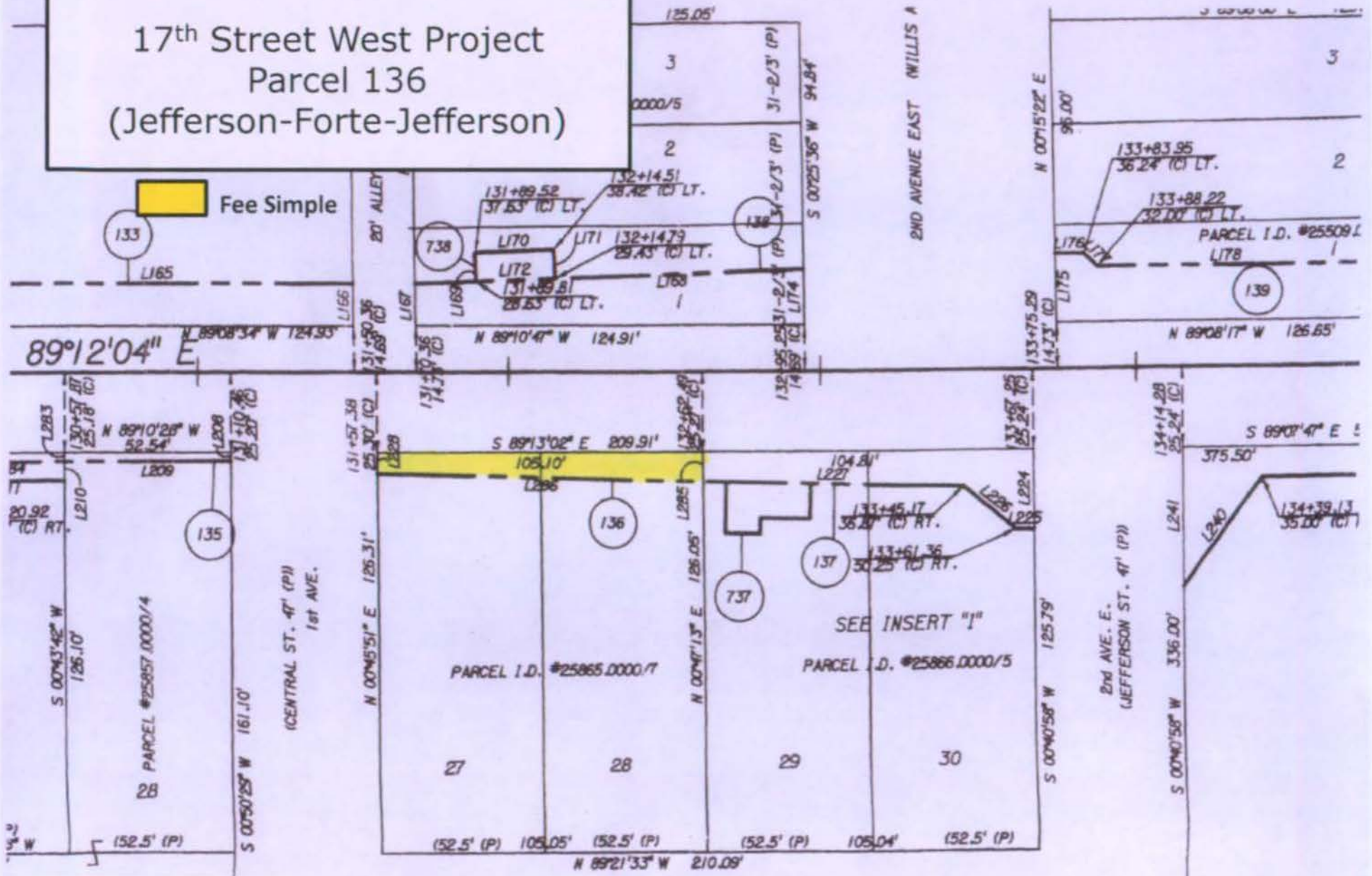


Subject Property
98 17th St. E.

17th Street West Project
Parcel 136
(Jefferson-Forte-Jefferson)

17th Street West Project Parcel 136 (Jefferson-Forte-Jefferson)

Fee Simple



73.101, if any, as full payment for the taking of their property pursuant to the Stipulated Order of Taking dated May 16, 2008, and for all damages of any nature in connection with Parcel 136, and any and all claims against Petitioner, MANATEE COUNTY, in the above-referenced case exclusive of all attorney's fees and expert fees and costs.

2. The Court hereby confirms, ratifies, and approves that the right, title, and interest in Parcel 136, as more fully described in the legal description attached hereto as Schedule 1, is vested in the Petitioner.

3. This judgment is based upon the right-of-way maps and construction plans entered into evidence at the Hearing on the Order of Taking on May 16, 2008, and the Petitioner warranting that the stormwater drainage on the remainder property will not be adversely affected by the road improvement project which is the subject of this action.

4. Since the amount of the Stipulated Final Judgment exceeds Petitioner's previous deposit into the Registry of the Court, Petitioner, MANATEE COUNTY, shall pay the additional sum of EIGHT THOUSAND EIGHT HUNDRED FIFTY and 00/100 DOLLARS (\$8,850.00) to Defendants JULIUS JEFFERSON, DECEASED; JOHNNIE LEE FORTE, DECEASED; and JAMES EDWARD JEFFERSON.

5. Petitioner, MANATEE COUNTY, shall deposit into the Registry of the Court the amount of EIGHT THOUSAND EIGHT HUNDRED FIFTY and 00/100 DOLLARS (\$8,850.00) as to Parcel 136 within thirty (30) days of the receipt by the Petitioner's counsel of a conformed copy of the entry of this Stipulated Final Judgment by the Court for proper disbursement, pending apportionment proceedings, if any.

6. The Court retains jurisdiction for the purposes of awarding attorney's fees and costs, reasonable expert fees and costs and supplemental proceeding attorney's fees related to

the award of the reasonable expert fees and costs, for apportionment issues, and for the purpose of awarding apportionment attorney's fees and costs, if any.

DONE AND ORDERED in Chambers at Bradenton, Manatee County, Florida, on this _____ day of August, 2009.

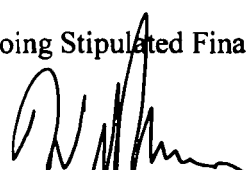
EDWARD NICHOLAS
Circuit Court Judge

Conformed copies to:
Rodney C. Wade, Esq.
William S. Galvano, Esq.
Paul A. Blucher, Esq.


STIPULATION

The parties, Petitioner, MANATEE COUNTY, a political subdivision of the State of Florida, and Defendants JULIUS JEFFERSON, DECEASED; JOHNNIE LEE FORTE, DECEASED; and JAMES EDWARD JEFFERSON, by and through undersigned counsel, hereby stipulate and jointly move for the entry of the foregoing Stipulated Final Judgment.

RODNEY C. WADE, ESQ.
Florida Bar No.: 0374091
Assistant County Attorney
Manatee County Attorney's Office
Post Office Box 1000
Bradenton, Florida 34206-1000
Telephone: (941) 745-3750
Facsimile: (941) 749-3089
Attorneys for Petitioner
MANATEE COUNTY
Dated: _____



WILLIAM S. GALVANO, ESQ.
Florida Bar No.: 0966487
GRIMES GOEBEL GRIMES HAWKINS
GLADFELTER & GALVANO, P.L.
Post Office Box 1550
Bradenton, Florida 34206
Phone No.: (941) 748-0151
Facsimile No.: (941) 748-0158
Attorney for Defendants
JULIUS JEFFERSON, DECEASED, and
JOHNNIE LEE FORTE, DECEASED
Dated: _____



PAUL A. BLUCHER, ESQ.
Florida Bar No. 0860409
BLUCHER LAW GROUP, L.L.C.
7300 Delainey Court
Sarasota, Florida 34240
Telephone: (941) 361-1145
Facsimile: (941) 361-1146
Attorneys for Defendant
JAMES EDWARD JEFFERSON
Dated: _____

Zoller, Najjar, & Shroyer, L.C.

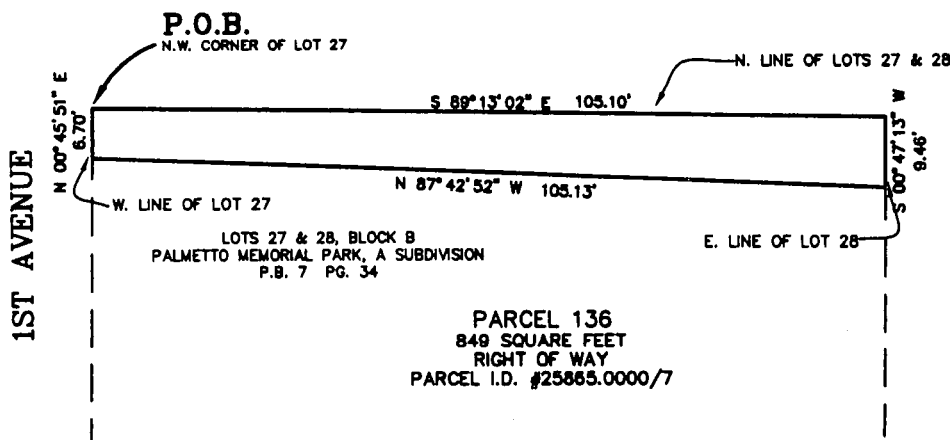
ENGINEERS, PLANNERS, SURVEYORS, LANDSCAPE ARCHITECTS & ENVIRONMENTAL CONSULTANTS
 201 5th AVENUE DRIVE EAST, BRADENTON, FLORIDA 34206, (941)748-8080, FAX: (941)748-3747
 CERTIFICATE OF AUTHORIZATION No. LB 6982

DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF LOTS 27 AND 28, BLOCK B OF PALMETTO MEMORIAL PARK, A SUBDIVISION IN SECTION 13, TOWNSHIP 34 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 7, PAGE 34 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 27; THENCE S 89°13'02" E, ALONG THE NORTH LINE OF SAID LOTS 27 AND 28, A DISTANCE OF 105.10 FEET; THENCE S 00°47'13" W, ALONG THE EAST LINE OF SAID LOT 28, A DISTANCE OF 9.46 FEET; THENCE N 87°42'52" W, A DISTANCE OF 105.13 FEET; THENCE N 00°45'51" E, ALONG THE WEST LINE OF SAID LOT 27, A DISTANCE OF 6.70 FEET TO THE POINT OF BEGINNING.

17TH STREET WEST



REVISIONS
 ADD STREET NAME 04/26/05 H.B.



NOT A BOUNDARY SURVEY

DESCRIPTION SKETCH

OF

PARCEL 136
 RIGHT OF WAY
 17th STREET WEST

LOCATED IN

SECTION 13, TOWNSHIP 34 SOUTH, RANGE 17 EAST
 MANATEE COUNTY, FLORIDA

LEGEND

- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- R/W RIGHT OF WAY
- C1 CURVE NUMBER (SEE TABLE)
- L1 LINE NUMBER (SEE TABLE)
- P.B. PLAT BOOK
- PG. PAGE

UPDATED 1/25/05 bfa

NOTES:

1. BEARINGS ARE BASED ON THE NORTH LOT LINE OF LOT 27, BLOCK B PALMETTO MEMORIAL PARK, A SUBDIVISION, PLAT BOOK 7, PAGE 34, MANATEE COUNTY, FLORIDA, HAVING A BEARING OF S 89°10'28" E.
2. THIS DRAWING IS A SKETCH ONLY AND DOES NOT REPRESENT A BOUNDARY SURVEY. CORNERS HAVE NOT BEEN FIELD LOCATED OR SET.

NOTE: THIS DESCRIPTION SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

I HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION HAVE BEEN PREPARED UNDER MY DIRECT SUPERVISION, THAT THEY ARE A TRUE REPRESENTATION OF THE LAND AS SHOWN AND DESCRIBED HEREON, THAT THEY ARE CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THEY MEET THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA, CHAPTER 89C, FLORIDA ADMINISTRATIVE CODE.

BY: *J. N. Gatch*
 JAMES N. GATCH, P.S.M.
 FLORIDA CERTIFICATE NO. LS 3295
 DATE OF CERTIFICATION: 08/25/05

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SCHEDULE 1