

**MANATEE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

APPROVED IN OPEN SESSION

SUBJECT	Eminent Domain; 9 th Street East Project, Parcels 105, 705A & 705B, Watkins Investment Limited Partnership; Settlement Expert Fees & Costs	TYPE AGENDA ITEM	NOV 21 2011 BOARD OF COUNTY COMMISSIONERS MANATEE COUNTY, FLORIDA
DATE REQUESTED	November 21, 2011	DATE SUBMITTED/REVISED	November 8, 2011
BRIEFINGS? Who?	None	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>Jerry 11/9/11</i>		

ACTION DESIRED

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

FORM OF MOTION – Approval of the settlement of fees and costs with Watkins Investment Limited Partnership, the landowner of Parcels 105, 705A & 705B, for \$31,250, in the eminent domain case of Manatee County v. Bradenton THCI Holding Company, et al., Case No.: 2009-CA-3661, Parcels 105, 705A & 705B.

ENABLING/REGULATING AUTHORITY

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

Florida Statutes § 73.091 requires the condemning authority to pay the landowner's reasonable and necessary expert witness fees and costs. State Department of Transportation v. Nassau Partners, Ltd., 878 So.2d 1286 (Fla. 1st DCA 2004), holding that a cost hearing concerning the amount a condemning authority is required to pay property owner's expert witnesses is a supplemental proceeding allowing the court to award additional attorney's fees to the owner's attorney.

BACKGROUND/DISCUSSION

- Manatee County previously acquired Parcel 105, in Fee Simple, and Parcels 705A and 705B, Temporary Construction Easements, from landowner Watkins Investments Limited Partnership as part of the 9th Street East Road Improvement Project (53rd Avenue East to 57th Avenue East) by Order of Taking on May 4, 2010. The parent tract is improved with a retail grocery store and parking lot occupied by business tenant Winn-Dixie Stores, Inc., and is located at the southeast corner of 9th Street East and 53rd Avenue East with a physical address of 1106 and 1010 53rd Avenue East, Bradenton, Manatee County, Florida.
- The areas acquired are described as follows:

Parcel 105 is a Fee Simple, partial strip-take along the property's west border along 9th Street East approximately 404 feet in length with a depth of 10 feet consisting of 4,038 sq. ft., more or less.

Parcel 705A is a Temporary Construction Easement for restoration of the northern driveway on the subject property's 9th Street East side approximately 41 feet in length with a depth of 14 feet consisting of 574 sq. ft., more or less.

Parcel 705B is a Temporary Construction Easement adjacent to the backflow prevention devices south of the southernmost driveway on the 9th Street East side of the property and will be used for the restoration of the backflow prevention devices. Parcel 705B is approximately 12 feet in length with a depth of 20 feet consisting of 240 sq. ft., more or less.

The duration for both of these Temporary Construction Easements is five years.

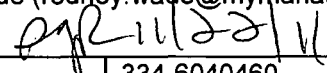
The improvements contained within the areas to be acquired are the backflow preventers, concrete pad, business signage, asphalt, curbing, and landscaping.

- As a result of negotiations, the landowner agreed to settle as full compensation for the acquisition of the property in the amount of \$275,000; and the business owners agreed to settle their business damage claim in the amount of \$100,000, a savings of \$1,213,137. These settlements were inclusive of all attorney's fees.
- In an eminent domain action, the County is required to pay the landowner's reasonable and necessary fees and costs pursuant to Florida Statutes § 73.091. The County received and reviewed detailed invoices from the landowner's experts and negotiated the following settlement of all remaining costs:

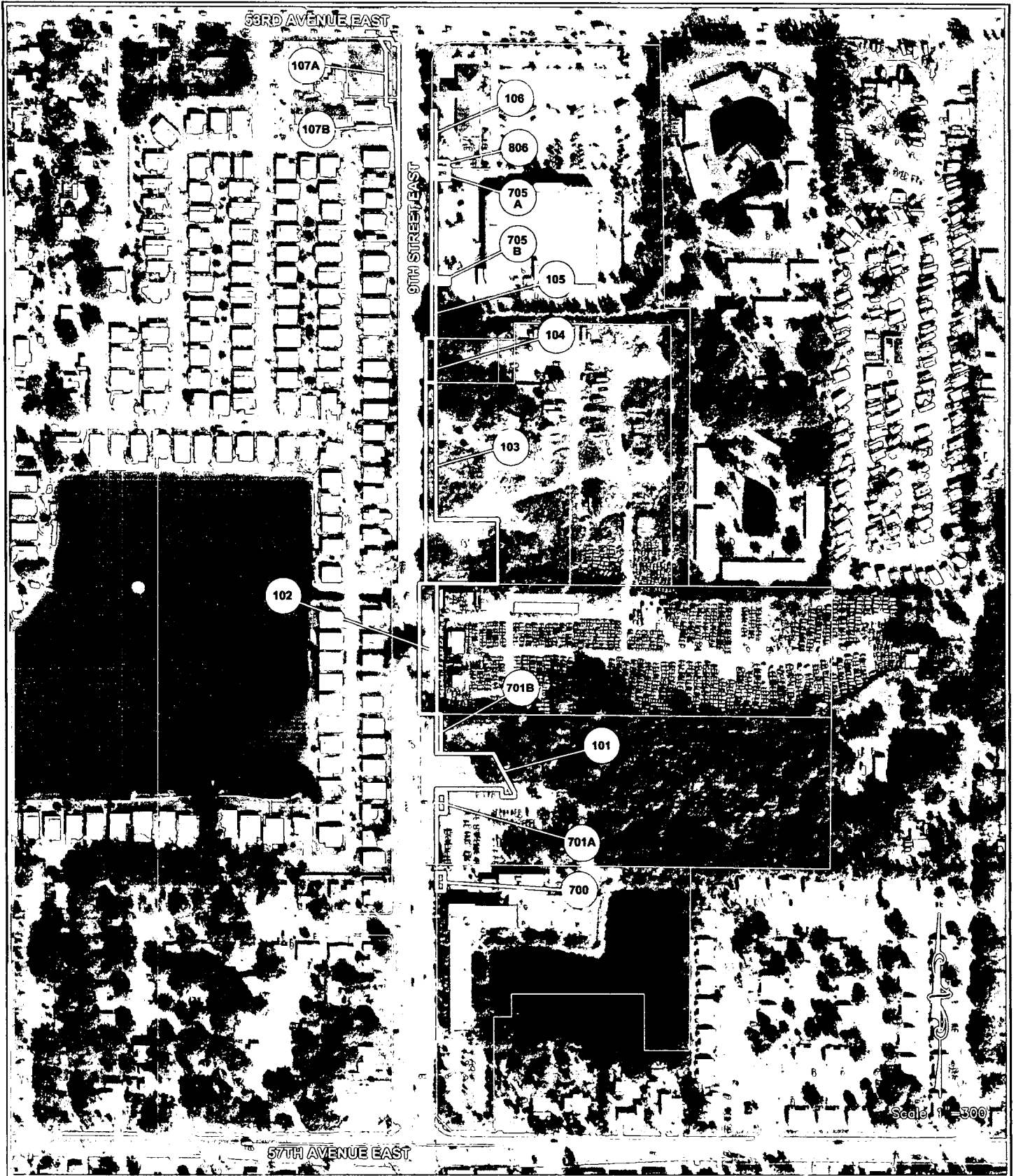
	<u>Requested Fee</u>	<u>Settlement</u>
CALHOUN, COLLISTER & PARHAM, INC., for real estate appraisal services	\$16,830.00	\$14,850.00
MESIMER AND ASSOCIATES, INC., for engineering services	<u>\$18,566.25</u>	<u>\$16,400.00</u>
TOTAL	\$35,396.25	\$31,250.00

- Based on the foregoing, it is recommended that the Board approve the proposed settlement. The amount in controversy could be eclipsed by the additional attorney's fees the County might have to pay the landowner's attorney for a cost hearing as well as the costs incurred by the County in defending the claim.
- If approved, it is requested that a check in the amount of \$31,250 be issued to the Trust Account of The Property Rights Law Firm, P.A., in full payment of all expert's fees and costs in this action, and same be forwarded to Gregory W. Stoner, Esq., The Property Rights Law Firm, P.A., 121 South Orange Avenue, Suite 1470, Orlando, Florida 32801, for proper distribution.

COUNTY ATTORNEY REVIEW	
Check appropriate box	
<input type="checkbox"/>	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 2. Proposed Stipulated Final Order Taxing Fees and Costs		Forward one (1) approved copy of this Agenda Memo to Deputy County Attorney, Rodney C. Wade (rodney.wade@mymanatee.org). 	
COST:	\$31,250	SOURCE (ACCT # & NAME):	334-6040460-561000/6040460-0003 Road Impact Fees
COMMENTS:		AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)	

cc: Ron Schulhofer, Director, Public Works Department
 Sia Mollanazar, P.E., Deputy Director, Engineering Services Division
 Brian Martineau, Senior Engineering Specialist, Project Management Division
 Charlie H. Bishop, PMP, Director, Property Management Department
 Joaquin Servia, Manager, Property Acquisition Division
 Barbara Carter, SR/WA, Real Property Supervisor, Property Acquisition



**9th STREET EAST
53rd AVE. E. to 57th AVE. E.**

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
MANATEE COUNTY, FLORIDA** **CIVIL DIVISION**

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

Petitioner,

v.

BRADENTON THCI HOLDING
COMPANY LLC, a Delaware limited
liability company; et al.,

Defendants.

CASE NO.: 2009-CA-3661
DIVISION: "D"
EMINENT DOMAIN PROCEEDING
Parcels 105, 705A, and 705B

**STIPULATED FINAL ORDER TAXING FEES AND COSTS AS TO
PARCELS 105, 705A & 705B, WATKINS INVESTMENTS LIMITED PARTNERSHIP**

THIS CAUSE having come on for consideration upon the joint motion for entry of a final order taxing fees and costs in accordance with Section 73.091, Florida Statutes (2010), made by counsel for the Petitioner, MANATEE COUNTY, a political subdivision of the State of Florida, and Defendant WATKINS INVESTMENTS LIMITED PARTNERSHIP, a foreign limited partnership (hereinafter "WATKINS"), as to Parcels 105, 705A, and 705B set forth hereinbelow, and it appearing to the Court that the parties were authorized to enter into such motion, and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. The sum of THIRTY-ONE THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$31,250.00) as and for full settlement of reasonable and necessary experts' fees and experts' costs incurred by the Defendant be taxed against the Petitioner, except for experts' fee and experts' costs relating to apportionment issues and proceedings, if any.

2. The following items of costs be and the same are hereby taxed against Petitioner in the amount set forth opposite each item as follows:

To CALHOUN, COLLISTER & PARHAM, INC., for real estate appraisal services, the sum of \$14,850.00

To MESIMER AND ASSOCIATES, INC., for engineering services, the sum of \$16,400.00

3. Upon entry and within thirty (30) days of receipt by the Petitioner of a conformed copy of this Final Order, the Petitioner shall issue a check in the amount of THIRTY-ONE THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$31,250.00) made payable to the TRUST ACCOUNT OF THE PROPERTY RIGHTS LAW FIRM, P.A., and forward same to Gregory W. Stoner, Esq., The Property Rights Law Firm, P.A., 121 South Orange Avenue, Suite 1470, Orlando, Florida 32801, for proper disbursement.

4. The Court reserves jurisdiction for the purposes of determining apportionment issues, if any, and the amount of reasonable expert fees and costs and supplemental attorney's fees and costs, if any, as to Defendant WATKINS relating to apportionment issues and proceedings, if any

DONE AND ORDERED in Chambers at Bradenton, Manatee County, Florida, on this _____ day of _____, 2011.

PETER A. DUBENSKY
Circuit Court Judge


Conformed copies to:

Rodney C. Wade, Esq.
Gregory W. Stoner, Esq.
Raandi L. Morales, Esq.

JOINT MOTION

The parties, by and through their undersigned attorneys, respectfully move for entry of the foregoing Stipulated Final Order Taxing Fees and Costs as to Parcels 105, 705A, and 705B, Defendant WATKINS.

RODNEY C. WADE, ESQ.
Florida Bar No.: 0374091
Deputy 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: _____



GREGORY W. STONER, ESQ.
Florida Bar No.: 0067334
The Property Rights Law Firm, P.A.
121 S. Orange Avenue, Suite 1470
Orlando, Florida 32801
Telephone: (407) 843-4900
Facsimile: (407) 849-1570
Attorneys for Defendant
WATKINS INVESTMENT LIMITED
PARTNERSHIP
Dated: 11/2/11