

February 12, 2013, Regular Meeting
Agenda Item #15

APPROVED IN OPEN SESSION February 12, 2013
BOARD OF COUNTY COMMISSIONERS, MANATEE COUNTY

Subject

Eminent Domain: 51st Avenue East at 15th Street East Intersection Improvement Project, Parcel 103 -
Approval of Settlement

Briefings

None

Contact and/or Presenter Information

Rodney C. Wade, Assistant County Attorney / Sandi Murphy, Ext. 3750

Action Requested

FORM OF MOTION: Approval of settlement for Parcel 103 with landowner, Sunstone Properties & Real Estate, LLC, a Florida limited liability company, and business owner, Sun Stone, Inc., a Florida corporation, d/b/a Federal Discount Beverage III, the total settlement of \$178,615 in the eminent domain case of *Manatee County v. Sunstone Properties & Real Estate, LLC, etc., et al.*, Case No. 2012-CA-4871, Parcel 103.

This settlement includes full payment for the acquisition of the property and settlement of the tenant's business damage claim: \$83,000 (less the County's previous deposit amount of \$68,150), subject to apportionment proceedings in accordance with Section 73.101, Florida Statutes, if any; all attorney's fees and costs for monetary and non-monetary benefits: \$40,000; and all expert witness fees and costs: \$55,615.

Enabling/Regulating Authority

Article X, Section 6A of the Florida Constitution requires the payment of "full compensation" for the taking of private property for a public purpose. Sections 73.091 and 73.092, Florida Statutes, 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.

Business damages are authorized under Section 73.071(3)(b), Florida Statutes, when there is a taking and less than the entire property is being taken for right-of-way purposes and a business established more than five (5) years is located upon the property and is subjected to damages as a result of the taking.

Background Discussion

Chapter 74, Florida Statutes, provides for possession and title in advance of entry of the final judgment. Manatee County previously acquired Parcel 103, in Fee Simple, from the landowner, Sunstone Properties & Real Estate, LLC, as part of the 51st Avenue East at 15th Street East Intersection Improvement Project by Stipulated Order of Taking dated September 27, 2012.

The parent tract is improved with structures that are leased to and occupied by business tenant, Sun Stone,

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - February 12, 2013

Inc., d/b/a Federal Discount Beverage III, and is located on the northeast corner of 51st Avenue East and 15th Street East with a physical address of 5027 15th Street East, Bradenton, Manatee County, Florida. The area acquired is described as follows:

Parcel 103 is a Fee Simple acquisition of 989 sq. ft. (0.02 acres) of the parent tract, a strip take on the south side of the property and includes a corner clip on the southwest corner. The improvements contained within the area to be acquired consist of asphalt pavement and sod.

Pursuant to the Stipulated Order of Taking, the County deposited the required amount of \$68,150 into the Registry of the Court on October 15, 2012, which is the date Manatee County acquired ownership of the property. The amount of the deposit was based upon the Order of Taking Appraisal prepared by Manatee County's real estate appraiser L. Burl Wilson, Jr., MAI. The funds remain on deposit with the Registry of the Court at this time.

As of the date of deposit, October 15, 2012, the County's appraiser valued the property at \$42,350, and the landowner's appraiser concluded to a value of \$139,700. As a result of court-ordered Mediation on December 7, 2012, the landowner agreed to settle as full compensation for the acquisition of the property in the amount of \$83,000 (less the previous Stipulated Order of Taking Deposit paid in to the Registry of the Court in the amount of \$68,150) for Parcel 103. This settlement amount is exclusive of attorney's fees and attorney litigation costs.

Pursuant to Section 73.015(2)(c), Florida Statutes, the business tenant, Sun Stone, Inc., d/b/a Federal Discount Beverage III, presented Manatee County with a business damage claim for \$1,121,940 as a result of a loss of parking spaces, site compression, lost 51st Avenue East driveway, lost site circulation, loss of overall site utility, and lost expansion potential due to the County's acquisition of Parcel 103. Manatee County made no offer to settle the business damage claim based upon analysis of our consultant CPA. However, the business tenant reduced its claim to \$0.00 as a result of negotiations and the County's willingness to reestablish a 34-foot driveway connection to 51st Avenue East. Therefore, as a part of the settlement, Manatee County will implement a cure on the property that includes reestablishment of the subject property's 51st Avenue driveway connection and the maintenance of access from 51st Avenue.

The attorney for the business tenant, Sun Stone, Inc., d/b/a Federal Discount Beverage III, requested \$337,000 for attorney's fees as to non-monetary benefits for obtaining the restored driveway which would eliminate the business damages and restore functionality to Parcel 103. The owner claimed that 90 percent of traffic to its business would be reduced as a result of the closure of the 51st Avenue East driveway.

Pursuant to Section 73.092, Florida Statutes, this settlement contemplates the payment of additional funds for attorney's fees and attorney litigation costs, inclusive of both monetary and non-monetary benefits, as follows: \$40,000 in full settlement of all attorney's fees and attorney litigation costs to the landowner's and business owner's attorney in connection with the acquisition of Parcel 103.

In an eminent domain action, the County is required to pay the landowner's reasonable and necessary fees and costs pursuant to Section 73.091, Florida Statutes. The County received and reviewed detailed invoices from the landowner's experts and negotiated the following settlement of all remaining fees and costs:

CALHOUN, COLLISTER & PARHAM, INC., for real estate appraisal services: Requested Fee: \$14,775;
Settlement: \$12,115

LANDON, MOREE & ASSOCIATES, INC., for engineering services: Requested Fee: \$31,025; Settlement:
\$23,000

MORGENSTERN PHIFER & MESSINA, P.A., for accounting fees in connection with business damage consultant services: Requested Fee: \$25,015; Settlement: \$20,500

This 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 property acquired.

Based on the foregoing, it is recommended that the Board approve the proposed settlement and authorize the County Attorney or Assistant County Attorney to execute the attached Stipulated Final Judgment and other necessary forms.

It is requested that a check be issued made payable to The Trust Account of Dorman & Gutman, P.L., for the sum of \$110,465 representing \$14,850 (the difference between the final settlement \$83,000 less the previous Stipulated Order of Taking Deposit \$68,150 for the acquisition of the property from the landowner) as well as \$40,000 for all attorney's fees and attorney litigation costs in accordance with Section 73.092, Florida Statutes, and \$55,615 for all expert fees and costs in accordance with Section 73.091, Florida Statutes, and mailed to Jack N. Gutman, Esq., Dorman & Gutman, P.L., 305 South Brevard Avenue, Suite 100, Tampa, Florida 33606-2360, for proper disbursement.

Copies to:

Ron Schulhofer, Director, Public Works Department
Sia Mollanazar, P.E., Deputy Director, Engineering Services
Jeff Streitmatter, Manager, Project Management Division
Vincent Canna, 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 Division

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

This is a County Attorney item.

Reviewing Attorney

N/A

Instructions to Board Records

Forward one (1) approved copy of this Agenda Memo to Assistant County Attorney, Rodney C. Wade (rodney.wade@mymanatee.org). Sent via Email 2/12/13 (vj)

Cost and Funds Source Account Number and Name

\$110,465.00 / 307-6029960/561000-0003 - Gas Taxes

Amount and Frequency of Recurring Costs

N/A

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - February 12, 2013

Attachment: [AerialMap_Parcel103.pdf](#)

Attachment: [Proposed_SFJ_P103.pdf](#)



PROPERTY LOCATOR

Manatee County GIS Viewer

Parent Tract for
Parcel 103
5027 15th Street East

**51st Avenue East at 15th Street East
Intersection Improvement Project
ID #1649600002
Sunstone Properties & Real Estate, LLC
Commissioner: Robin DiSabatino**

**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.

SUNSTONE PROPERTIES & REAL
ESTATE, LLC, etc., et al.,

Defendants.

CASE NO.: 2012-CA-4871
DIVISION: "B"
EMINENT DOMAIN PROCEEDING
PARCEL 103

_____ /

STIPULATED FINAL JUDGMENT

THIS CAUSE having come on upon the stipulation of the Petitioner, MANATEE COUNTY, a political subdivision of the State of Florida, and Defendant SUNSTONE PROPERTIES & REAL ESTATE, LLC, a Florida limited liability company, and Defendant SUNSTONE, INC., a Florida corporation, d/b/a FEDERAL DISCOUNT BEVERAGE III, and it appearing to the Court that the parties were authorized to enter into such stipulation, and the Court finding that the compensation to be paid by the Petitioner is full, just, and reasonable for all parties concerned, and the Court being fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED:

1. That Defendants, SUNSTONE, do have and recover of and from Petitioner the sum of EIGHTY-THREE THOUSAND and 00/100 DOLLARS (\$83,000.00) in full payment for the property taken, designated as Parcel 103, and for damages resulting to the remainder and for all other damages of any kind and nature, including statutory interest, but excluding attorneys' fees, attorneys' costs, and expert fees and costs. Said award shall be subject to the claims of Defendant SUNTRUST BANK, a foreign corporation.

2. That of the award in Paragraph 1, above, the amount of \$9,900 represents the value of the land taken (Parcel 103).

3. That Petitioner shall receive a credit of SIXTY-EIGHT THOUSAND ONE HUNDRED FIFTY and 00/100 DOLLARS (\$68,150.00) previously deposited into the registry of the Court pursuant to the Stipulated Order of Taking as to Parcel 103 entered by this Court on September 27, 2012.

4. Petitioner, MANATEE COUNTY, in accordance with Florida Statutes § 73.092, shall pay the sum of FORTY THOUSAND and 00/100 DOLLARS (\$40,000.00) in full settlement of all attorney's fees and attorney litigation costs for monetary and non-monetary benefits in this case, payable to Defendants' counsel DORMAN & GUTMAN, P.L.

5. Petitioner, MANATEE COUNTY, in accordance with Florida Statutes § 73.091, shall pay the sum of FIFTY-FIVE THOUSAND SIX HUNDRED FIFTEEN and 00/100 DOLLARS (\$55,615.00) in full settlement of all expert witness fees and costs in this case, payable to Defendants' counsel DORMAN & GUTMAN, P.L., said sum representing the appraisal services of Calhoun Collister & Parham, Inc. in the amount of \$12,115.00, the engineering services of Landon, Moree & Associates in the amount of \$23,000.00 and the business damage consultant services of Morgenstern, Phifer & Messina, P.A. in the amount of \$20,500.00.

6. Petitioner, MANATEE COUNTY, shall issue a check made payable to DORMAN & GUTMAN, P.L., TRUST ACCOUNT representing the awards pursuant to Paragraphs 1, 4 and 5, above, less the credit pursuant to Paragraph 3, above, in the amount of **ONE HUNDRED TEN THOUSAND FOUR HUNDRED SIXTY-FIVE and 00/100 DOLLARS (\$110,465.00)** within thirty (30) days of the receipt by Petitioner's counsel of a

conformed copy of this Stipulated Final Judgment and mail said check to Jack N. Gutman, Esq., Dorman & Gutman, P.L., 305 South Brevard Avenue, Suite 100, Tampa, Florida 33606-2360.

7. That on or about November 8, 2012 the amount of TWENTY-NINE and 70/100 DOLLARS (\$29.70) was disbursed from the registry of the Court to Defendant KEN BURTON, JR., as Tax Collector of Manatee County for the pro rata taxes due on Parcel 103 as of the date of deposit in this matter, fully resolving the claims of Defendant KEN BURTON, JR., as Tax Collector of Manatee County to the award for Parcel 103.

8. That immediately upon entry of this Stipulated Final Judgment, and without further order of the court, the Clerk of the Court shall issue a check in the amount of **SIXTY-EIGHT THOUSAND ONE HUNDRED TWENTY and 30/100 DOLLARS (\$68,120.30)**, to Dorman & Gutman, P.L., Trust Account, representing Petitioner MANATEE COUNTY's previous deposit referenced in Paragraph 3, above, less the previous disbursement referenced in Paragraph 7, above, and mail said check to Jack N. Gutman, Esq., Dorman & Gutman, P.L., 305 S. Brevard Ave., Ste. 100, Tampa, FL 33606.

9. That the title to the following described real property, to wit:

See Attached Exhibit "A"

be and the same is vested and confirmed in Petitioner.

10. That the provisions contained in Paragraphs 13 and 14 of the Stipulated Order of Taking as to Parcel 103 in this matter entered on September 27, 2012 regarding the reestablishment of the subject property's 51st Avenue driveway connection and the maintenance of access from 51st Avenue are reincorporated herein. Petitioner's reestablishment of said driveway connection in substantial conformity with Petitioner's plans and specifications attached

hereto as Exhibit "B" and the maintenance of access from 51st Avenue are material conditions of the settlement of this matter.

11. That pursuant to Section 1112.3.2 of the Manatee County Land Development Code, implementation of a cure will not require a landscape buffer as defined in the Land Development Code nor will the parking lot be required to be brought up to existing code therefore there is no requirement for landscaping and end caps in the parking lot.

12. That the asphalt existing in the hatched area shown on Exhibit "C" attached hereto shall remain.

13. That the Court retains jurisdiction to apportion the award herein, if necessary, and to enforce the provisions of this Judgment.

DONE AND ORDERED in Chambers at Bradenton, Manatee County, Florida, on this _____ day of _____, 2013.

DIANA L. MORELAND
Circuit Court Judge

Conformed copies provided to:

Rodney Wade, Esquire

Jack N. Gutman, Esquire

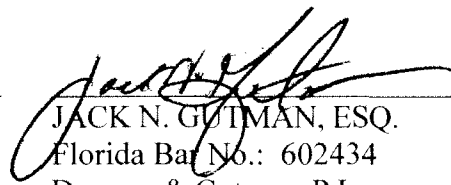
Janelle L. Esposito, Esquire

SunTrust Bank, a foreign corporation, c/o Laurie Pennington, Registered Agent

JOINT MOTION

The parties, Petitioner, MANATEE COUNTY, a political subdivision of the State of Florida, and Defendant SUNSTONE PROPERTIES & REAL ESTATE, LLC, a Florida limited liability company, and Defendant SUN STONE, INC., a Florida corporation, d/b/a FEDERAL DISCOUNT BEVERAGE III, by and through their respective attorneys, respectfully move for the entry of the foregoing Stipulated Final Judgment as to Parcel 103.

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
rodney.wade@mymanatee.org
Attorneys for Petitioner
MANATEE COUNTY
Dated: _____



JACK N. GUTMAN, ESQ.
Florida Bar No.: 602434
Dorman & Gutman, P.L.
305 South Brevard Avenue, Suite 100
Tampa, Florida 33606-2360
Telephone: (813) 254-8980
Facsimile: (813) 254-8983
jack.gutman@dormangutman.com
eric.ryder@dormangutman.com
Attorneys for Defendants
SUNSTONE PROPERTIES & REAL ESTATE,
LLC, and SUN STONE, INC., d/b/a FEDERAL
DISCOUNT BEVERAGE III
Dated: 1-31-13

EXHIBIT "A"

P.O.C. POINT OF COMMENCEMENT
 P.O.B. POINT OF BEGINNING
 R/W RIGHT-OF-WAY
 SEC SECTION
 COR CORNER
 SF SQUARE FEET

S88°54'21"E 136.86'

DESCRIPTION

COMMENCE AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 35 SOUTH, RANGE 18 EAST; THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4, S 88°58'28" E, A DISTANCE OF 45.46 FEET; THENCE LEAVING SAID SOUTH LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 AT A RIGHT ANGLE, N 01°01'32" E, A DISTANCE OF 46.76 FEET TO THE INTERSECTION OF THE EXISTING NORTHERLY RIGHT-OF-WAY OF 51ST AVENUE EAST AND THE EASTERLY RIGHT-OF-WAY OF 301 BOULEVARD, ALSO KNOWN AS 15TH ST. E.; SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY OF 301 BOULEVARD BY A NON-TANGENT CURVE CONCAVE WESTERLY WHOSE RADIUS POINT LIES S 87°19'01" W, A DISTANCE OF 2914.79 FEET FROM SAID POINT OF BEGINNING, THROUGH A CENTRAL ANGLE OF 00°26'52" (CHORD N 02°54'25" W 22.78 FEET) AN ARC DISTANCE OF 22.78; THENCE DEPARTING THE EASTERLY RIGHT-OF-WAY OF 301 BOULEVARD, S 49°05'02" E, A DISTANCE OF 24.27 FEET; THENCE S 88°09'13" E, A DISTANCE OF 106.74 FEET; THENCE S 00°16'05" W, A DISTANCE OF 6.37 FEET TO THE NORTHERLY RIGHT-OF-WAY OF 51ST AVENUE EAST; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY, N 88°38'02" W, A DISTANCE OF 123.88 FEET TO THE POINT OF BEGINNING.

CONTAINING A DESCRIBED AREA OF 989 SQUARE FEET MORE OR LESS.

E. LINE OF SECTION 12, TOWNSHIP 35 S., RANGE 17 E.
 W. LINE OF SECTION 7, TOWNSHIP 35 S., RANGE 18 E.
 15TH STREET EAST

25+00
 24+00
 20+00
 OLD 301

N00°21'07"E
 21.37'

L=141.03'
 R=2914.79'
 Δ=2°46'20"

LINE TABLE

LINE	BEARING	LENGTH
L1	S49°05'02"E	24.27
L2	S88°09'13"E	106.74
L3	S00°16'05"W	6.37

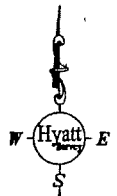
PID# 1649600002

CURVE TABLE

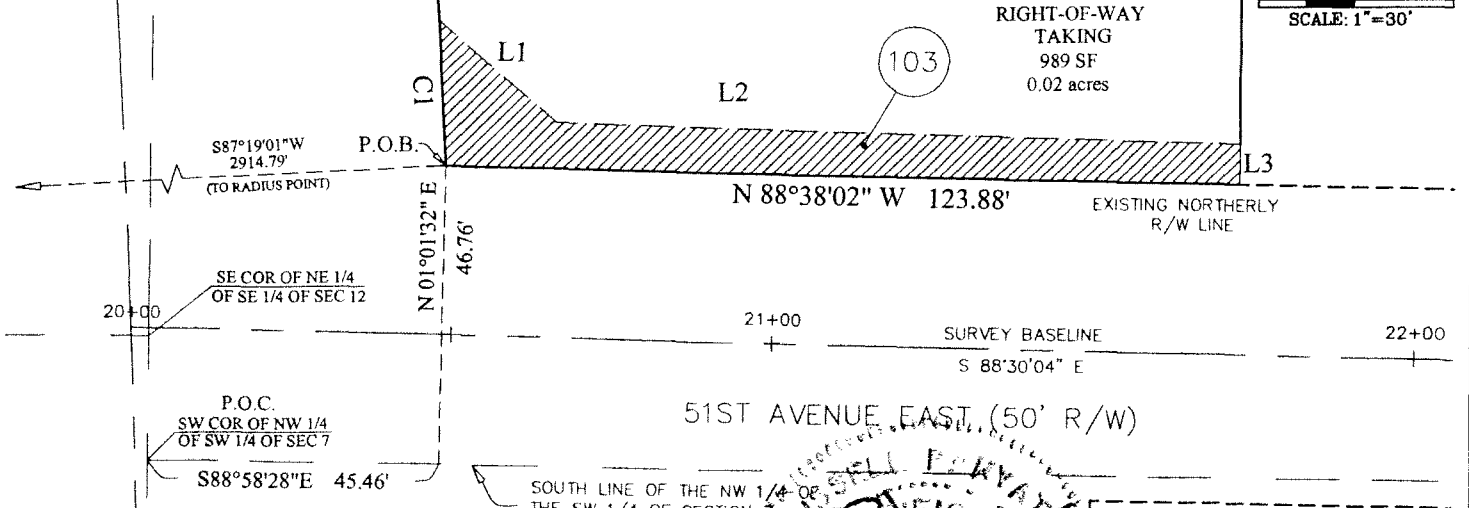
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD
C1	22.78	2914.79	0°26'52"	N02°54'25"W	22.78

RIGHT-OF-WAY TAKING
 989 SF
 0.02 acres

106.81
 W.50°01'00S



0 15 30
 SCALE: 1"=30'



Bearings shown hereon are based upon the North Right-of-Way Line of 51st Ave. East as being S 88°38'02" E and are relative to the State Plane Coordinate System NAD 1983, Florida West Zone.

THIS IS NOT A BOUNDARY SURVEY

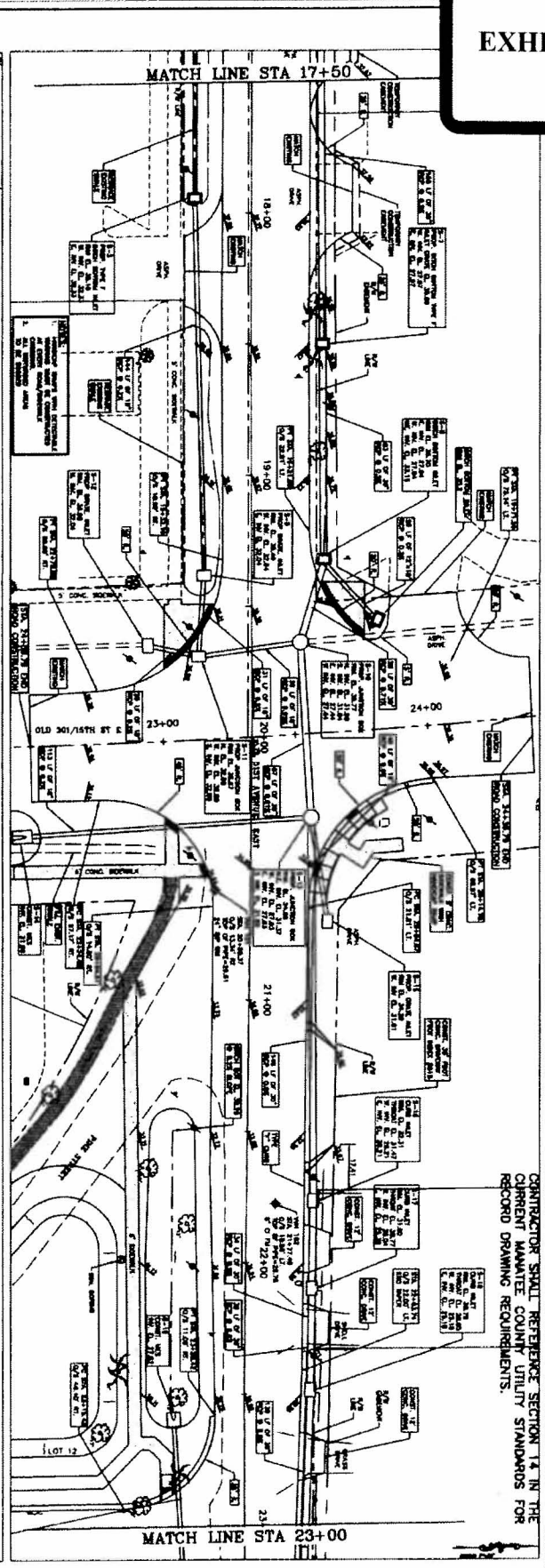
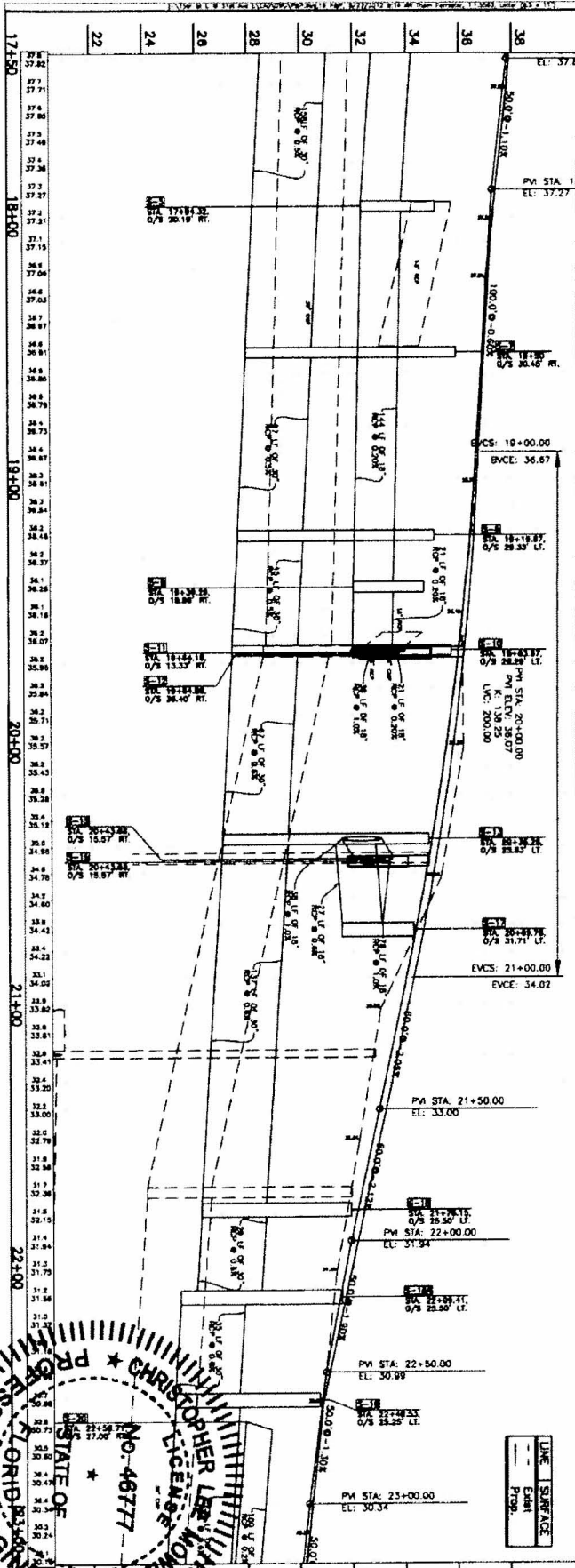
RUSSELL P. HYATT, P.S.M.
 Florida Surveyor's Reg'n. No. LS 8303
 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

- Revisions
1. Changed to Taking - 8/31/2011
 2. Revised square feet - 9/15/2011
 3. Clarified C1 Callout - 10/13/2011

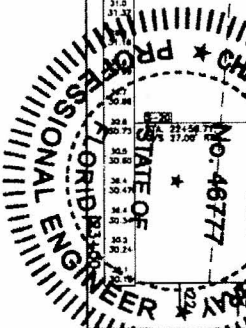
RIGHT-OF-WAY TAKING #103
 PARCEL ID#1649600002
 MANATEE COUNTY, FLORIDA

Hyatt Survey Services, Inc.
 Geographic Data Specialists
 11007.8th Avenue East Bradenton, Florida 34212
 Phone (941) 748-4693 Fax (941) 744-1643

JOB NUMBER 09-1461	SECTION 7, TOWNSHIP 35 SOUTH, RANGE 18 EAST	SCALE 1"=30'	DATE 08/26/10	DRAWN BY CBW	FILE NAME RW S&D_103.dwg	SHEET 1 OF 1
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CONTRACTOR SHALL REFERENCE SECTION 14 IN THE
CURRENT MANUATE COUNTY UTILITY STANDARDS FOR
RECORD DRAWING REQUIREMENTS.



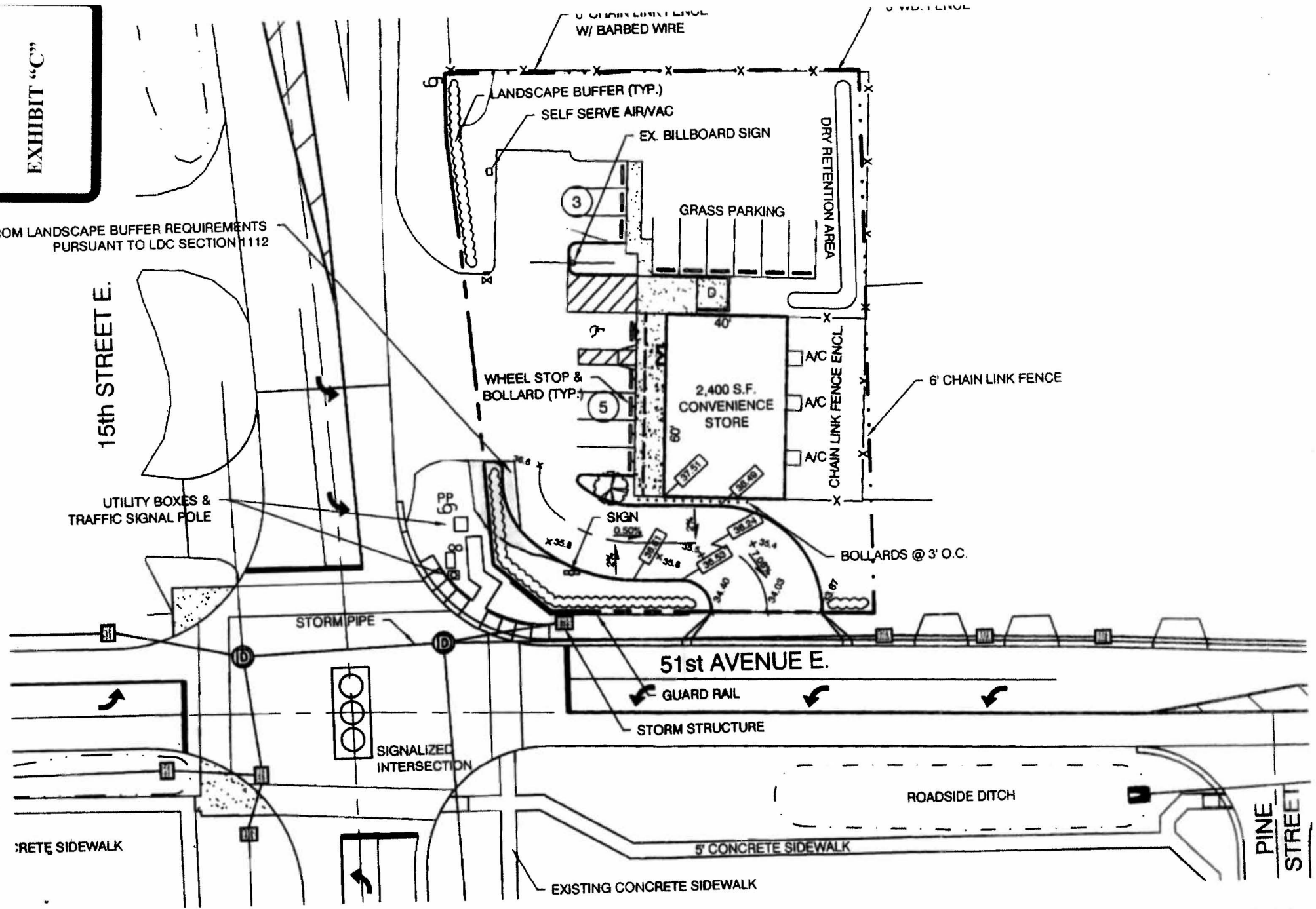
NO.	REVISION DESCRIPTION	BY	DATE
1	PROJECT 1		
2	SHEET 1		
3	REV./DATE		
4	SCALE		
5	DATE		
6	BY		
7	DATE		
8	REV./DATE		
9	BY		
10	DATE		
11	REV./DATE		
12	BY		
13	DATE		

15th ST EAST @ 51st AVE EAST
AND PINE ST RELOCATION
PLAN & PROFILE STA. 17+50 TO 23+00



EXHIBIT "C"

10M LANDSCAPE BUFFER REQUIREMENTS PURSUANT TO LDC SECTION 11112



SITE MODIFICATION

15th STREET E, 51st AVENUE E & PINE STREET

