

REVISED October 10, 2017 - Regular Meeting

Agenda Item #17

Approved in Open Session 10/10/17,
Manatee County
Board of County Commissioners

Subject

Manatee County v. El Rancho Village, Inc, et al.; 44th Avenue East; eminent domain; Parcel 731

Briefings

All

Contact and/or Presenter Information

Pamela J. D'Agostino, Assistant County Attorney
Ext. 3750

Action Requested

Consideration and rejection of the settlement offer of \$120,000 from Defendant, El Rancho Village, Inc., as it pertains to El Rancho's attorney's fee claim for non-monetary benefits obtained for Parcel 731, in the eminent domain matter *Manatee County v. El Rancho Village, Inc., et al*, Case No. 2011 CA 2445.

Enabling/Regulating Authority

Section 73.092(1)(b), Florida Statutes.

Background Discussion

Manatee County previously acquired Parcel 731, a temporary construction easement, as part of the road improvement to 44th Avenue East (US 41/1st Street East to 15th Street East) by Order of Taking on July 7, 2011.

The landowner agreed to accept as full compensation the amount of \$12,500. Accordingly, the landowner's attorney was, pursuant to Section 73.092(1)(c), entitled to an attorney's fee award of \$4,092 for the benefits achieved for the landowner. These terms were memorialized in the Stipulated Final Judgment which was entered and approved by the Court in October of 2015. In entering the Stipulated Final Judgment, the Court reserved jurisdiction to (1) make a determination of reasonable expert fees and costs due and owing to the landowner and (2) consider whether a nonmonetary benefit had been obtained for the landowner through the efforts of its attorney in accordance with Section 73.092(1)(b).

In August of 2015, the landowner's attorney filed a motion to recover \$19,461.25 in expert appraisal witness fees and costs and \$57,268.75 in expert engineering witness fees and costs.

In April of 2016, the landowner's appraiser agreed to accept \$16,542 in full settlement of reasonable and necessary expert appraisal witness fees and costs and a Stipulated Final Order was entered as to same.

When efforts to negotiate a settlement amount with the landowner's engineering expert witness failed, a hearing was held for the Court to determine the reasonable and necessary expert witness fees and costs that the landowner's engineer was entitled to receive. In May of 2017, the Court issued an order awarding the landowner's engineering expert witness \$32,513.75.

In May of 2017, the landowner's attorney filed two (2) motions. The first sought supplemental attorney's fees for litigating the matter of the engineer's expert witness fees and costs. The second sought attorney's fees for the nonmonetary benefits obtained for the landowner.

In August of 2017, the County Attorney's Office negotiated a resolution with the landowner's attorney as to the first motion. That same month, the Board approved that negotiated settlement of \$62,250 and a Stipulated Final Order was entered as to same.

In September of 2017, the County Attorney's Office negotiated with the landowner's attorney in an effort to resolve the second motion. The landowner's attorney is willing to accept \$120,000 in full settlement of their claim for non-monetary benefit attorney's fees.

If the Board accepts this offer, all outstanding issues with this case will be concluded and no further litigation will take place.

If the Board rejects this offer, at least one and possibly two additional hearings will have to be held. At those hearings the Court will first determine whether the landowner's attorney is entitled to any nonmonetary benefit attorney's fee. If the Court determines that the landowner's attorney is entitled to such a fee award, then the Court must determine the amount of the fee award. The County will ultimately be responsible for paying the reasonable fees and costs of the landowner's attorney to litigate the issue of the attorney's entitlement to a fee. The County will not, however, be responsible for paying the landowner's attorney's fees and costs for litigating the issue of the amount of the award.

Based on the foregoing, and since it is the judgment of the County Attorney's Office that the non-monetary benefits claim is without merit, it is recommended that the Board reject the offer of \$120,000.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

This is a County Attorney item.

Reviewing Attorney

D'Agostino

Instructions to Board Records

E-mail an approved copy of this agenda item to:

Pamela J. D'Agostino, Assistant County Attorney, pamela.dagostino@mymantee.org; and Alicia M. Stull, Paralegal, alicia.stull@mymantee.org

Distributed 10/11/17, RT

Cost and Funds Source Account Number and Name

N/A

Amount and Frequency of Recurring Costs

N/A

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - October 10, 2017

Attachment: [Motion to Tax Non-Monetary Benefit Attorney's Fees.pdf](#)

Attachment: [El Rancho Offer.pdf](#)

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - October 10, 2017

October 10, 2017 - Regular Meeting
Agenda Item #16

Subject

Manatee County v. El Rancho Village, Inc, et al.; 44th Avenue East; eminent domain; Parcel 731

Briefings

All

Contact and/or Presenter Information

Pamela J. D'Agostino, Assistant County Attorney
Ext. 3750

Action Requested

Consideration and rejection of the settlement offer of \$120,000 from Defendant, El Rancho Village, Inc., as it pertains to El Rancho's attorney's fee claim for non-monetary benefits obtained for Parcel 731, in the eminent domain matter *Manatee County v. El Rancho Village, Inc., et al*, Case No. 2011 CA 2445.

Enabling/Regulating Authority

Section 73.092(1)(b), Florida Statutes.

Background Discussion

Manatee County previously acquired Parcel 731, a temporary construction easement, as part of the road improvement to 44th Avenue East (US 41st Street East to 15th Street East) by Order of Taking on July 7, 2011.

The landowner agreed to accept as full compensation the amount of \$12,500. Accordingly, the landowner's attorney was, pursuant to Section 73.092(1)(c), entitled to an attorney's fee award of \$4,092 for the benefits achieved for the landowner. These terms were memorialized in the Stipulated Final Judgment which was entered and approved by the Court in October of 2015. In entering the Stipulated Final Judgment, the Court reserved jurisdiction to (1) make a determination of reasonable expert fees and costs due and owing to the landowner and (2) consider whether a nonmonetary benefit had been obtained for the landowner through the efforts of its attorney in accordance with Section 73.092(1)(b).

In August of 2015, the landowner's attorney filed a motion to recover \$19,461.25 in expert appraisal witness fees and costs and \$57,268.75 in expert engineering witness fees and costs.

In April of 2016, the landowner's appraiser agreed to accept \$16,542 in full settlement of reasonable and necessary expert appraisal witness fees and costs and a Stipulated Final Order was entered as to same.

When efforts to negotiate a settlement amount with the landowner's engineering expert witness failed, a hearing was held for the Court to determine the reasonable and necessary expert witness fees and costs that the landowner's engineer was entitled to receive. In May of 2017, the Court issued an order awarding the landowner's engineering expert witness \$32,513.75.

In May of 2017, the landowner's attorney filed two (2) motions. The first sought supplemental attorney's fees for litigating the matter of the engineer's expert witness fees and costs. The second sought attorney's fees for the nonmonetary benefits obtained for the landowner.

In August of 2017, the County Attorney's Office negotiated a resolution with the landowner's attorney as to the first motion. That same month, the Board approved that negotiated settlement of \$62,250 and a Stipulated Final Order was entered as to same.

In September of 2017, the County Attorney's Office negotiated with the landowner's attorney in an effort to resolve the second motion. The landowner's attorney is willing to accept \$120,000 in full settlement of their claim for non-monetary benefit attorney's fees.

If the Board accepts this offer, all outstanding issues with this case will be concluded and no further litigation will take place.

If the Board rejects this offer, at least one and possibly two additional hearings will have to be held. At those hearings the Court will first determine whether the landowner's attorney is entitled to any nonmonetary benefit attorney's fee. If the Court determines that the landowner's attorney is entitled to such a fee award, then the Court must determine the amount of the fee award. The County will ultimately be responsible for paying the reasonable fees and costs of the landowner's attorney to litigate the issue of the attorney's entitlement to a fee. The County will not, however, be responsible for paying the landowner's attorney's fees and costs for litigating the issue of the amount of the award.

Based on the foregoing, and since it is the judgment of the County Attorney's Office that the non-monetary benefits claim is without merit, it is recommended that the Board reject the offer of \$120,000.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

This is a County Attorney item.

Reviewing Attorney

D'Agostino

Instructions to Board Records

E-mail an approved copy of this agenda item to:

Pamela J. D'Agostino, Assistant County Attorney, pamela.dagostino@mymantee.org; and Alicia M. Stull, Paralegal, alicia.stull@mymantee.org

Cost and Funds Source Account Number and Name

N/A

Amount and Frequency of Recurring Costs

N/A

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - October 10, 2017

Attachment: [Motion to Tax Non-Monetary Benefit Attorney's Fees.pdf](#)

Attachment: [El Rancho Offer.pdf](#)

REPLACED

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

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

vs.

CASE NO.: 2011 CA 2445
DIVISION: B – Judge Smith
PARCEL: 731

EL RANCHO VILLAGE, INC., a Florida
non-profit corporation, formerly known as EL
RANCHO RESIDENTS' ASSOCIATION, INC.; et al.,
Defendant. /

MOTION TO TAX NON-MONETARY BENEFIT ATTORNEY'S FEES

COMES NOW the Defendant, EL RANCHO VILLAGE, INC., a Florida non-profit corporation, formerly known as EL RANCHO RESIDENTS' ASSOCIATION, INC., by and through its undersigned attorneys, ADAMS AND REESE LLP, and pursuant to 73.092, Florida Statutes, moves for non-monetary benefit attorney's fees in this eminent domain action and in support states the following:

1. The construction plans as submitted at the Order of Taking hearing indicated the closure of El Rancho's existing driveway and the construction of a new non-functional driveway at a different location. At the Order of Taking hearing, El Rancho challenged and objected to the county's driveway relocation plan.

2. Following the Order of Taking hearing and prior to the commencement of construction, the County revised its construction plans so as to allow El Rancho's existing driveway to remain at its pre-construction location.

3. The change in the construction plans was a direct result of El Rancho's counsel challenging the County's interpretation of its construction plans and demonstrating the non-functional character of the driveway proposed by the county. The change in the driveway location resulted in a non-monetary benefit to El Rancho.

Wherefore, Defendant, EL RANCHO, respectfully requests this Court to enter an order taxing non-monetary benefit attorney's fees in this eminent domain action pursuant to 73.092, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document on June 1, 2017 with the Clerk of Court using the Florida Courts E-filing Portal, which will send a notice of electronic filing to: **Pamela J. D'Agostino, Esquire** at pamela.dagostino@mymanatee.org; alicia.stull@mymanatee.org and juliet.shepard@mymanatee.org.

ADAMS AND REESE LLP
1515 Ringling Blvd., Suite 700
Post Office Box 49017
Sarasota, Florida 34230-6017
(941) 316-7600
Bob.Gill@arlaw.com

By: 
Robert J. Gill/FBN 0290785

Pamela DAgostino

From: Robert Gill <Robert.Gill@arlaw.com>
Sent: Wednesday, September 27, 2017 10:38 AM
To: Pamela DAgostino
Subject: Re: El Rancho

Pamela following our conversation I have decided that you can instruct your board in executive session that I would except \$120,000 in full settlement of the non monetary benefit attorney fee. I reserve the right withdraw this offer as the hearing draws near and I begin preparations

Sent from my iPhone