

February 13, 2018 - Regular Meeting  
Agenda Item #17

Approved in Open Session 2/31/18  
Manatee County  
Board of County Commissioners

Subject

9th Street East Road Improvement Project (53rd Avenue East to 57th Avenue East) / Proposed Eminent Domain Settlement; Case No. 2009 CA 3661

Briefings

Briefing Provided Upon Request

Contact and/or Presenter Information

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

Action Requested

FORM OF MOTION:

Motion to (1) approve the proposed settlement with Defendant Austerman, Inc., doing business as A & A Auto Recycling in Manatee County Circuit Case No. 2009 CA 3661 relative to the taking of Parcel 102 for improvements to 9th Street East as delineated in the attached Stipulated Final Judgment as to Parcel 102 and (2) authorize the County Attorney or his designee to execute the attached Joint Motion for Entry of Stipulated Final Judgment as to Parcel 102 and all other necessary paperwork associated with said settlement.

Enabling/Regulating Authority

Article X, Section 6 of the Florida Constitution, along with Chapters 73, 74 and 127, Florida Statutes.

Background Discussion

Manatee County acquired Parcel 102 in fee simple title as part of the 9th Street East Road Improvement Project. This project was a CIP-approved project. The Stipulated Order of Taking was entered on December 1, 2010. Pursuant to that Stipulated Order of Taking, the County deposited \$126,150 into the Court Registry on December 15, 2010. This amount was equal to the appraised value as determined by the County's expert appraiser who valued the land taken at \$57,100, the improvements taken at \$5,500, the severance damages at \$19,200, and the cure costs at \$44,350.

The landowner's appraiser concluded the total value of the taking to be \$718,900 (\$63,400 for the land taken, \$15,800 for the improvements taken and \$639,700 for the cure costs). The landowner also asserted that business damages associated with lost parking were incurred and ultimately, the landowner's business damages expert arrived at a business damages claim of \$519,000. After analyzing the impacts of the project on the business, the County's business damages expert valued the business damages incurred as a result of the taking to be \$109,317. Finally, the landowner was seeking experts' fees and costs of \$241,874 and attorney's fees and costs of \$196,506. The total amount sought by the landowner and his counsel for the land and improvements taken, the severance and business damages, the cure costs, the attorneys' fees and the experts' fees and costs was \$1,676,280.

An all-day mediation conference was conducted on January 11, 2018. The County was represented at

Manatee County Government Administrative Center  
First Floor, Commission Chambers  
9:00 a.m. - February 13, 2018

mediation by County Attorney Mitchell Palmer, Assistant County Attorney Pamela D'Agostino, and Deputy Public Works Director Sia Mollanazar.

At the conclusion of that conference, the landowner agreed to accept \$1,062,000 (less the previous deposit in the amount of \$126,150) in full settlement of all claims for compensation for the taking of Parcel 102, including the value of the land and improvements taken, the severance and business damages, the cure costs, the attorneys' fees and costs, and the experts' fees and costs and all other damages claimed arising from this eminent domain case. In an eminent domain action, the County is required to pay a landowner's attorneys' fees and costs and reasonable and necessary experts' fees and costs. Mediated settlements are contingent upon review and approval of the Board of County Commissioners.

This recommended settlement takes into account the relative strengths and weaknesses in the case, the value of the property acquired, and the estimated costs associated with further litigation including a jury trial.

Based on the foregoing, it is recommended that the Board approve the proposed settlement and authorize the County Attorney's Office to execute the Joint Motion for Entry of Stipulated Final Judgment as to Parcel 102 and any other necessary documents in furtherance of this settlement.

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

Assuming Board approval, please e-mail an approved copy of this agenda item to each of the following:

Pamela J. D'Agostino, Assistant County Attorney, [pamela.dagostino@mymanatee.org](mailto:pamela.dagostino@mymanatee.org)

Alicia M. Stull, Paralegal, [alicia.stull@mymanatee.org](mailto:alicia.stull@mymanatee.org)

Sia Mollanazar, County Engineer, [sia.mollanazar@mymanatee.org](mailto:sia.mollanazar@mymanatee.org)

**Distributed 2/15/18, RT**

Cost and Funds Source Account Number and Name

\$935,850; 2016 Transportation Revenue Impact Fee note Capital Projects: 399-6040460-561000/6040460-0003.

Amount and Frequency of Recurring Costs

N/A

Attachment: [Stipulated Final Judgment as to Parcel 102.pdf](#)

Attachment: [Joint Motion for Entry of Stipulated Final Judgment as to Parcel 102.pdf](#)

Attachment: [Location Map of Subject Property.pdf](#)

Manatee County Government Administrative Center  
First Floor, Commission Chambers  
9:00 a.m. - February 13, 2018

Attachment: [Legal Description and Sketch of Taking.pdf](#)

Attachment: [Eminent Domain Comparison Chart.pdf](#)

**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.

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CASE NO.: 2009 CA 3661  
DIVISION: D  
EMINENT DOMAIN PROCEEDING  
PARCEL NO.: 102

**STIPULATED FINAL JUDGMENT AS TO PARCEL 102**

THIS CAUSE having come before the Court upon the Joint Motion for Entry of a Stipulated Final Judgment as to Parcel 102 filed by Petitioner, MANATEE COUNTY, a political subdivision of the State of Florida (Petitioner) and Defendant, AUSTERMAN, INC., a Florida corporation, d/b/a A & A AUTO RECYCLING (Defendant) and it appearing to the Court that the parties were authorized to enter into the joint motion, and the Court finding that the compensation to be paid by Petitioner is full, just and reasonable for all parties concerned, and the Court being fully advised in the premises, it is hereby **ADJUDGED** as follows:

1. The December 1, 2010, Stipulated Order of Taking as to Parcel 102, recorded at Official Records Book 2709, Page 6116, of the Public Records of Manatee County, Florida, is hereby approved, ratified and confirmed.

2. Defendant shall have and recover of and from the Petitioner the total amount of ONE MILLION SIXTY-TWO THOUSAND AND 00/100 DOLLARS (\$1,062,000.00) in full settlement of all claims for compensation for the taking of Parcel 102, inclusive of the value of land and improvements taken, severance damages, cure costs, business damages, attorneys' fees

and costs, experts' fees and costs and all other damages claimed by Defendant, its heirs, successors and assigns, now and in the future, arising from this cause. This settlement includes all claims for attorneys' fees and costs incurred during the representation of Defendant in this case, including fees for all representation relative to business damages, monetary benefits, non-monetary benefits and all apportionment-related matters. This settlement includes all claims for experts' fees and costs in this case on behalf of Defendant, including fees for all appraisers, business damages experts, consultants, engineers, architects, general contractors, land planners, landscape architects and surveyors.

3. Petitioner is entitled to a credit in the amount of ONE HUNDRED TWENTY SIX THOUSAND ONE HUNDRED FIFTY AND 00/100 DOLLARS (\$126,150.00), representing the Petitioner's amended good faith estimate of value for Parcel 102 previously paid into the Registry of this Court on December 15, 2010, and subsequently disbursed in full to THE BLUCHER LAW GROUP, LLC, attorney for the Defendant.

4. Defendant is therefore owed a balance from Petitioner of NINE HUNDRED THIRTY FIVE THOUSAND EIGHT HUNDRED FIFTY AND 00/100 DOLLARS (\$935,850.00) in full settlement of this cause.

5. Within THIRTY (30) days from the filing of this Stipulated Final Judgment, Petitioner will pay the total sum of NINE HUNDRED THIRTY FIVE THOUSAND EIGHT HUNDRED FIFTY AND 00/100 DOLLARS (\$935,850.00) to BLUCHER LAW GROUP, LLC, Trust Account, for appropriate disbursement. Payment shall be sent via U.S. Mail to the offices of Blucher Law Group, LLC, c/o Paul A. Blucher, Esq., 7300 Delainey Court, Sarasota, Florida 34240.

6. The Court reserves jurisdiction for the purposes of enforcing, as necessary, the terms and conditions of this Stipulated Final Judgment.

DONE AND ORDERED in chambers at Bradenton, Manatee County, Florida, on this \_\_\_\_\_ day of February, 2018.

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GILBERT A. SMITH, JR.  
Circuit Court Judge

Conformed copies to:  
Pamela J. D'Agostino, Esq.  
Paul A. Blucher, Esq.

**JOINT MOTION FOR ENTRY OF  
STIPULATED FINAL JUDGMENT AS TO PARCEL 102**

Petitioner, MANATEE COUNTY, a political subdivision of the State of Florida, and Defendant, AUSTERMAN, INC., a Florida corporation, d/b/a A & A AUTO RECYCLING, by and through their undersigned counsel, hereby move that the Court enter the foregoing Stipulated Final Judgment as to Parcel 102.

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PAMELA J. D'AGOSTINO, ESQ.  
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Assistant County Attorney  
MANATEE COUNTY ATTORNEY'S OFFICE  
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Bradenton, Florida 34206-1000  
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and juliet.shepard@mymanatee.org  
Attorney for Petitioner, MANATEE COUNTY

Dated: \_\_\_\_\_



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PAUL A. BLUCHER, ESQ.  
Florida Bar No.: 860409  
Blucher Law Group, LLC  
7300 Delainey Court  
Sarasota, Florida 34240  
Telephone: (941) 361-1145  
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Primary e-mail: pab@fifthamendment.com  
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dstevens@fifthamendment.com  
Attorney for Defendant, AUSTERMAN,  
INC., a Florida corporation, d/b/a A & A  
AUTO RECYCLING

Dated: 01/17/18

**Project No. 6040460**  
**9th Street East Road Improvement Project**  
**(53rd Avenue East – 57th Avenue East)**  
*Manatee County v. Bradenton THCI Holding Company, LLC, et al.*  
**AUSTERMAN, INC., a Florida corporation, d/b/a A & A Auto Recycling**  
**Case No. 2009 CA 3661**  
**Parcel 102**





**EMINENT DOMAIN COMPARISON CHART**  
**MANATEE COUNTY V. BRADENTON THCI HOLDING COMPANY LLC**  
**AUSTERMAN, INC., a Florida corporation, d/b/a A & A AUTO RECYCLING**  
**CASE NO.: 2009 CA 3661**  
**PARCEL: 102**

	Manatee County	Landowner
<b>Value of Land Taken</b>	<b>\$57,100</b>	<b>\$63,400</b>
<b>Value of Improvements Taken</b>	<b>\$5,500</b>	<b>\$15,800</b>
<b>Severance Damages</b>	<b>\$19,200</b>	<b>-0-</b>
<b>Cost to Cure</b>	<b>\$44,350</b>	<b>\$639,700</b>
<b>Business Damages</b>	<b>\$109,317</b>	<b>\$519,000</b>
<b>Expert Fees and Costs</b>	<b>N/A</b>	<b>\$241,874</b>
<b>Statutory Attorneys' Fees</b>	<b>N/A</b>	<b>\$196,506</b>
<b>TOTAL COMPENSATION:</b>	<b>\$235,467</b>	<b>\$1,676,280</b>

This chart is simply intended to provide a succinct comparison of the respective positions of the parties from which the ultimate settlement valuations were derived.

