

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - July 24, 2018

July 24, 2018 - Regular Meeting
Agenda Item #12

Approved in Open Session 7/24/18,
Manatee County
Board of County Commissioners

Subject

Settlement Offer in Eminent Domain Action; Manatee County v. El Rancho Village; 2011 CA 2445; Parcel 731; 44th Avenue East (US 41/1st Street East to 15th Street East) Project

Briefings

Briefing Provided Upon Request

Contact and/or Presenter Information

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

Action Requested

OTHER ACTION REQUIRED:

Motion to reject settlement offer of \$24,000 from Adams and Resse LLP, the law firm representing El Rancho Village, Inc., to resolve the County's claim for sanctions against Mr. Gill pursuant to Section 57.105, Florida Statutes, in the eminent domain matter *Manatee County v. El Rancho Village, Inc., et al*, Case No. 2011 CA 2445.

Enabling/Regulating Authority

Section 57.105, Florida Statutes.

Background Discussion

Manatee County previously acquired Parcel 731, a temporary construction easement, as part of the road improvements 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, Mr. Robert Gill of Adams and Reese LLP, was, pursuant to Section 73.092(1)(c), Florida Statutes, 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, among other things, consider whether a nonmonetary benefit had been obtained for the landowner through the efforts of Mr. Gill in accordance with Section 73.092(1)(b), Florida Statutes.

In May of 2017, Mr. Gill filed a motion seeking attorney's fees for nonmonetary benefits allegedly obtained for the landowner.

In September of 2017, the County Attorney's Office negotiated with Mr. Gill in an effort to resolve his claim for attorney's fees for nonmonetary benefits. Mr. Gill was willing to accept \$120,000 in full settlement of his

claim for nonmonetary benefit attorney's fees. Mr. Gill's offer was presented to the Board in October of 2017 with a recommendation by the County Attorney's Office that the offer be rejected. This Board rejected Mr. Gill's offer.

The County Attorney's Office proceeded with discovery on Mr. Gill's claim for a nonmonetary benefit and concluded that Mr. Gill knew or should have known that his motion for nonmonetary benefits was not supported by material facts or law and was thus a frivolous motion. Accordingly, the County Attorney's Office filed a motion seeking an award of sanctions against Mr. Gill pursuant to Section 57.105, Florida Statutes.

The County Attorney's Office served Mr. Gill with notice and a copy of its motion for sanctions and gave Mr. Gill, as required by statute, twenty-one (21) days to withdraw his motion. The motion was never withdrawn by Mr. Gill and on January 30, 2018, a hearing took place on Mr. Gill's motion to recover a nonmonetary benefit attorney's fee. The Court denied Mr. Gill's motion.

On April 3, 2018, a hearing was held on the County's motion for sanctions against Mr. Gill for filing his frivolous nonmonetary benefit claim. The Court issued a written order on April 9, 2018, attached, granting the County's motion for sanctions against Mr. Gill and reserving jurisdiction to determine the amount of the sanction to be imposed. Section 57.105, Florida Statutes, requires the Court to award a reasonable attorney's fees as a sanction for raising an unsupported claim. For the Court to lawfully determine the amount of the reasonable attorney's fees to be awarded, another hearing must take place. At that hearing, the County must present evidence of the number of hours worked by the various legal personnel to defend the frivolous claim and the reasonable hourly rates for those personnel. The County must also present expert witness testimony to prove that its work efforts were reasonable and necessary in defense of the claim and that the time spent and overall claim for attorney's fees and costs by the County is reasonable.

In an effort to avoid further litigation, the County Attorney's Office has attempted to negotiate with Mr. Gill and Adams and Reese LLP an agreed upon amount for the sanction to be awarded. The County's Attorney's Office has conservatively estimated that its reasonable attorney's fees and costs in defending the frivolous motion are \$63,151.50 (\$58,100 in attorney's fees and \$5,051.50 in costs for court reporting and transcription services). Adams and Reese LLP has offered to pay the County \$24,000 as full and final settlement to resolve the County's claim for sanctions against Mr. Gill. In connection with the settlement and payment, Adams and Reese LLP also requires that the County withdraw its motion for sanctions and stipulate to the entry of an order vacating and rendering moot the Court's April 9, 2018 order, which granted the County's motion for sanctions against Mr. Gill.

The County will ultimately be responsible for paying the reasonable fees and costs of its own expert witness to litigate the issue of determining the amount of reasonable attorney's fees and costs to be paid by Mr. Gill and awarded to the County. If an appeal is filed, additional costs will also be incurred, although the County's Attorney's Office does not believe that the appellate court will overturn any of the trial court's rulings thus far. The County Attorney's Office does not believe that accepting this settlement is in the best interests of the County.

Based on the foregoing, it is recommended that the Board reject the settlement offer of \$24,000.

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@mymanatee.org and Alicia M. Stull,
Paralegal, alicia.stull@mymanatee.org

Distributed 7/26/18, RT

Cost and Funds Source Account Number and Name

N/A

Amount and Frequency of Recurring Costs

N/A

Attachment: [Ltr from Adams & Reese LLP with Settlement Offer.pdf](#)

Attachment: [Order Granting County's Motion for Sanctions.pdf](#)

CONFIDENTIAL SETTLEMENT COMMUNICATION

July 9, 2018

VIA E-MAIL ONLY

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Re: **Manatee County v. El Rancho Village – Motion for Sanctions**
Case No. 2011 CA 2445

Dear Mr. Palmer and Mrs. D'Agostino:

Pursuant to your request, I am providing this letter with Adams and Reese LLP's offer to resolve the County's claim for sanctions against Robert J. Gill pursuant to § 57.105, Fla. Stat. As previously discussed, Adams and Reese LLP is willing to pay \$24,000.00 as full and final settlement of the County's claim. In connection with the settlement and payment, Adams and Reese LLP would also require that the County withdraw its motion for sanctions and stipulate to the entry of an order vacating the Court's April 9, 2018 Order as moot.

We believe that this is a very good offer under the circumstances. In the event that the amount of fees is not amicably resolved, the County will incur significant expenses in proving the amount of its attorneys' fees as well as the reasonableness of same. Under Florida law, the County is not entitled to recover the attorneys' fees or costs associated with proving the amount of its attorneys' fees. Moreover, there is a reasonable chance that during the process of discovery, the Florida Supreme Court will enter a decision in *Wheaton v. Wheaton*, SC17-716. As you know, the County did not comply with Rule 2.516 of the Florida Rules of Judicial Administration when it served the safe-harbor notice. If the Florida Supreme Court decides that compliance with Rule 2.516 is required, it will necessitate the Court vacating its non-final order upon entitlement and entering a final order denying the County's motion. The *Wheaton* case has been fully briefed since May. No oral argument has been requested or scheduled. A decision should be rendered in the next few months.

If no decision is reached in *Wheaton* or the decision establishes that service of your safe-harbor notice was valid, any final award of attorneys' fees will be appealed to the Second District Court of Appeal. Mr. Gill will have numerous arguments as to the propriety of the trial court's decision to find entitlement to an award of attorneys' fees. His strongest arguments will be that the County failed to comply with the safe-harbor requirement by failing to wait the required period of time and filing its motion before the expiration of the safe-harbor period (an argument which is completely separate from the issue of the safe-harbor notice's service,

Mitchell O. Palmer, County Attorney
Pamela J. D'Agostino, Assistant County Attorney
July 9, 2018
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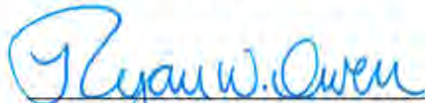
discussed above) and that he was reasonably entitled to rely upon the opinion of Mr. Diaz that the plans for the project changed. We believe that the Second District is likely to overturn the trial court's determination that the County is entitled to sanctions.

It therefore seems likely that by rejecting this settlement offer and going forward, the County will not only dedicate its resources to an effort which will not produce any return, but it will also forfeit a generous settlement offer. We do not believe that this course of action would be in the best interest of the County and its taxpayers. Accordingly, we urge you to accept the settlement offer.

As always, if you have any questions or wish to discuss this matter further, please do not hesitate to contact me directly.

Sincerely,

ADAMS AND REESE LLP



Ryan W. Owen

RWO/

cc: Robert J. Gill (via e-mail)
Martin Stern (via e-mail)
David L. Boyette (via e-mail)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
MANATEE COUNTY, FLORIDA

FILED FOR RECORD
2018 APR -9 PM 3:09
CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

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

Petitioner,

v.

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

CASE NO.: 2011 CA 2445
DIVISION: B
EMINENT DOMAIN PROCEEDING
PARCEL NO.: 731

Defendants.

**FINAL ORDER GRANTING PETITIONER MANATEE COUNTY'S REFILED
MOTION TO TAX FEES AND COSTS PURSUANT TO SECTION 57.105, FLORIDA
STATUTES, AS TO DEFENDANT'S MOTION TO TAX NON-MONETARY BENEFIT
(ATTORNEY'S FEES AS TO ENTITLEMENT ONLY)**

THIS CAUSE came before the Court on April 3, 2018, upon petitioner, Manatee County's motion to tax fees and costs pursuant to Section 57.105, Florida Statutes against defendant, El Rancho Village, Inc. ("El Rancho"), upon El Rancho's motion to tax non-monetary benefit attorney's fees; refiled by Manatee County as a motion seeking an award of sanctions against Robert J. Gill, counsel for El Rancho. The Court, after having heard argument of counsel and having received evidence and testimony from the parties as to same and being otherwise fully advised in the premises, finds as follows:

Prior to the Order of Taking hearing on July 7, 2011, El Rancho had an existing driveway and entrance at 3rd Street East, Bradenton, Florida. The construction plans submitted at the Order of Taking hearing indicated that El Rancho's existing driveway and entrance at 3rd Street East would not be closed. Manatee County's witnesses at the Order of Taking hearing also testified that El Rancho's existing driveway and entrance at 3rd Street East would not be closed.

There was insufficient evidence at the Order of Taking hearing, to establish that Manatee County had any plan to close or relocate El Rancho's existing driveway and the entrance at 3rd Street East. Following the Order of Taking hearing, any additions or revisions to Manatee County's construction plans relative to El Rancho's existing driveway and entrance at 3rd Street East did not result in a change to the location of El Rancho's driveway and the entrance at 3rd Street East. Manatee County's construction project also did not change the location of El Rancho's existing driveway and entrance at 3rd Street East.

The efforts of El Rancho's counsel did not result in any non-monetary benefit to El Rancho in relation to the existing driveway and entrance at 3rd Street East. On June 1, 2017, when initially presented to the Court, and at all times thereafter, El Rancho's attorney, Robert J. Gill of Adams and Reese LLP, knew that El Rancho's claim for non-monetary benefit attorney's fees was without support in law or fact. Therefore, it is

ORDERED AND ADJUDGED that Manatee County's motion to tax fees and costs; pursuant to Section 57 105, Florida Statutes against defendant, El Rancho Village, Inc. ("El Rancho"); upon defendant's Motion to Tax Non-Monetary Benefit Attorney's Fees, refiled by Manatee County seeking an award of sanctions against Robert J. Gill, counsel for El Rancho is **GRANTED** as follows:

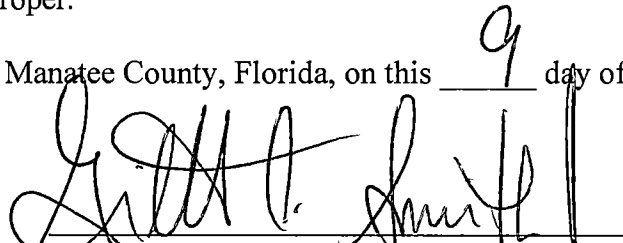
A. Manatee County is entitled to recover its reasonable attorneys' fees incurred in defense of El Rancho's motion to tax non-monetary benefit attorney's fees to be paid by El Rancho's attorney, Robert J. Gill of Adams and Reese LLP; pursuant to Section 57.105, Florida Statutes, along with prejudgment interest, costs and any other and further relief as this Court deems appropriate and just.

B. The Court reserves jurisdiction to make a determination of the amount of

reasonable attorneys' fees and costs to be awarded to Manatee County; along with prejudgment interest, due and owed to Manatee County in accordance with Section 57.105, Florida Statutes, in defense of El Rancho's motion to tax non-monetary benefit attorney's fees.

C. The Court also reserves jurisdiction to enforce this Order and to enter such further orders and judgments as may be necessary and proper.

DONE AND ORDERED in Bradenton, Manatee County, Florida, on this 9 day of April, 2018.


GILBERT A. SMITH, JR.
Circuit Judge

Conformed copies to:
Pamela D'Agostino, Esquire
Robert J. Gill, Esquire
Ryan W. Owen, Esquire