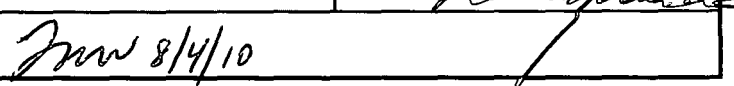


**MANATEE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

<b>SUBJECT</b>	Eminent Domain - Ware's Creek Storm Water Improvement Project – Spoil Site, Parcel E-100; Approval of Offer of Judgment/ Proposal for Settlement	<b>TYPE AGENDA ITEM</b>	Consent
<b>DATE REQUESTED</b>	August 10, 2010	<b>DATE SUBMITTED/REVISED</b>	August 3, 2010
<b>BRIEFINGS? Who?</b>	None	<b>CONSEQUENCES IF DEFERRED</b>	If the landowner does not "beat" the offer with a higher judgment, it is responsible for its expert fees and costs accruing after the Offer of Judgment is rejected or expires by operation of law.
<b>DEPARTMENT/DIVISION</b>	County Attorney's Office	<b>AUTHORIZED BY TITLE</b>	Tedd N. Williams, Jr. County Attorney
<b>CONTACT PERSON TELEPHONE/EXTENSION</b>	Rodney Wade/Sandi Murphy Ext. 3750	<b>PRESENTER/TITLE TELEPHONE/EXTENSION</b>	Rodney C. Wade Deputy County Attorney Ext. 3750
<b>ADMINISTRATIVE APPROVAL</b>	 Approved in Open Session AUG 10 2010 BOARD OF COUNTY COMMISSIONERS MANATEE COUNTY, FLORIDA		

**ACTION DESIRED**

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

**FORM OF MOTION** - Approval of the attached Offer of Judgment/Proposal for Settlement by Manatee County to Defendant Old City Hall Associates, LLLP, a Florida limited liability limited partnership, the landowner of Parcel E-100, for the sum of \$5,250,000, subject to apportionment proceedings in accordance with Florida Statutes § 73.101, less the County's previous deposit amount of \$4,070,000, to settle all pending claims against Manatee County, exclusive of expert fees and costs and statutory attorney's fees pursuant to Florida Statutes §§ 73.091 and 73.092 in the eminent domain case of *Manatee County v. Old City Hall Associates, LLLP; et al.*, Case No.: 2009-CA-7307, Parcel E-100.

**ENABLING/REGULATING AUTHORITY**

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

Article X, Section 6(a) of the Florida Constitution requires the payment of "full compensation" for the taking of private property for a public purpose. Florida Statutes §§ 73.091 and 73.092 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. Rule 1.442 of the Florida Rules of Civil Procedure and Florida Statutes § 73.032 provide the procedure for making an offer of judgment/proposal for settlement.

**BACKGROUND/DISCUSSION**

- The subject property is located at the southwest corner of Manatee Avenue West at the border of the banks of Ware's Creek and has a physical address of 500 15<sup>th</sup> Street West, Bradenton, Manatee County, Florida. The site is a vacant lot with remnants of its former use as Bradenton's City Hall, which contains 3.70 acres (161,254.3 sq. ft.).
- The purpose of the acquisition of the fee simple total parcel is for the purposes of dredging and conducting spoil site operations for the Ware's Creek Storm Water Improvement Project, including dewatering of the spoil material, construction, and the staging of equipment.

- Florida Statutes Chapter 74 provides for possession and title in advance of entry of the final judgment. Manatee County acquired by Stipulated Order of Taking dated August 26, 2009, in Fee Simple Parcel E-100 from landowner Old City Hall Associates, LLLP.
- Pursuant to the Stipulated Order of Taking, the County deposited \$4,070,000 into the Registry of the Court on September 9, 2009, which is the date Manatee County acquired ownership of the property. Pursuant to a court order of withdrawal, payment of these funds was then made to the landowner by the Clerk of the Circuit Court.
- Summary of the County's and the landowner's appraisal reports stating the values of the property acquired:

	MANATEE COUNTY	LANDOWNER
Appraiser:	Wilson Real Estate, Inc.	Richard Harris & Associates, Inc.
Date of Value:	02/25/09	09/09/09
Fee Simple:	\$4,070,000 (\$25.25/sq. ft.) rounded	\$9,675,000 (\$60/sq. ft.)
<b>Total Compensation:</b>	<b><u>\$4,070,000</u></b>	<b><u>\$9,675,000</u></b>

- A Mediation Conference was held July 23, 2010, for purposes of settling the valuation of the acquisition of Parcel E-100. Manatee County and the landowner, Old City Hall Associates, LLLP, reached an impasse at mediation.
- The County's proposed 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 acquisition.
- The purpose behind the offer of judgment is, first, to facilitate a fair and equitable settlement early in the case thus eliminating additional litigation expenses and, second, to limit the Defendant's expert witness costs for which Manatee County is responsible. If the property owner rejects the offer of judgment and does not obtain a verdict or settlement in excess of the amount of the offer of judgment, the County will not be responsible for paying the owner's experts from the rejection of the offer through trial.
- Based on the foregoing, it is recommended that the Board approve the proposed Offer of Judgment/Proposal for Settlement to Defendant Old City Hall Associates, LLLP, for \$5,250,000 less the previous deposit amount of \$4,070,000. This offer is exclusive of attorney's fees and costs.

**COUNTY ATTORNEY REVIEW**

Check appropriate box	
<input type="checkbox"/>	<b>REVIEWED</b> <b>Written Comments:</b> <input type="checkbox"/> Attached <input type="checkbox"/> Available from Attorney (Attorney's initials: )
<input type="checkbox"/>	<b>NOT REVIEWED (No apparent legal issues.)</b>
<input type="checkbox"/>	<b>NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)</b>
<input checked="" type="checkbox"/>	<b>OTHER:</b> This is a County Attorney item.

ATTACHMENTS: (List in order as attached)		INSTRUCTIONS TO BOARD RECORDS:	
1. Aerial Map of Subject Property 2. Proposed Offer of Judgment / Proposal for Settlement as to Parcel E-100		Forward one (1) approved copy of this Agenda Memo to Deputy County Attorney, Rodney C. Wade (rodney.wade@mymanatee.org). <i>✓ 8/10/10 eu</i>	
<b>COST:</b>	\$5,250,000 - <del>\$4,070,000</del> (Initial Deposit) \$1,180,000	<b>SOURCE (ACCT # &amp; NAME):</b>	Manatee County Storm Water Capital Improvement: 465-6028801-561000/6028801-0003  Florida Department of Environmental Protection  Southwest Florida Water Management District  City of Bradenton
<b>COMMENTS:</b>		<b>AMT./FREQ. OF RECURRING COSTS:</b> <b>(ATTACH FISCAL IMPACT STATEMENT)</b>	

cc: Ron Schulhofer, Director, Public Works Department  
 Sia Mollanazar, P.E., Deputy Director, Engineering Services Division  
 Walter Sowa, Project Manager, 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

**APPROVED IN OPEN SESSION**  
**AUG 10 2010**  
**BOARD OF COUNTY COMMISSIONERS**  
**MANATEE COUNTY, FLORIDA**





Subject Property  
500 15<sup>th</sup> St. W.

**Bradenton**

Ware's Creek Storm Water  
Improvement Project  
Parcel E-100  
(Old City Hall Associates, LLLP)

**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.

OLD CITY HALL ASSOCIATES, L.L.L.P.,  
et al.,

Defendants.

CASE NO.: 2009-CA-7307

DIVISION: D

**EMINENT DOMAIN PROCEEDING**

PARCEL E-100

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**OFFER OF JUDGMENT/PROPOSAL FOR SETTLEMENT**  
**AS TO PARCEL E-100**

Petitioner, MANATEE COUNTY, a political subdivision of the State of Florida, by and through its undersigned counsel, pursuant to Rule 1.442, Florida Rules of Civil Procedure, and Florida Statutes § 73.032, hereby serves this Offer of Judgment/Proposal for Settlement on Defendant OLD CITY HALL ASSOCIATES, L.L.L.P., a Florida limited liability limited partnership, for the taking of its interest in Parcel E-100 and for all other damages of any nature whatsoever in this action for the total sum of FIVE MILLION TWO HUNDRED FIFTY THOUSAND and 00/100 DOLLARS (\$5,250,000.00).

Pursuant to Rule 1.442, Florida Rules of Civil Procedure, the Petitioner hereby makes and serves this Offer of Judgment/Proposal for Settlement no earlier than 90 days after service of process on Defendant OLD CITY HALL ASSOCIATES, L.L.L.P., and no later than 45 days prior to the date set for trial or the first day of the docket on which the case is set for trial, whichever is earlier.

1. This Offer of Judgment/Proposal for Settlement is to settle all pending claims with the Defendant OLD CITY HALL ASSOCIATES, L.L.L.P., exclusive of attorney's fees and costs.

2. This offer is made in strict accordance with Rule 1.442, Florida Rules of Civil Procedure, and Florida Statutes § 73.032.

3. If accepted, the Offer of Judgment/Proposal for Settlement is subject to apportionment proceedings in accordance with Florida Statutes § 73.101.

4. The area of land is described as Parcel E-100 in the Petition in this cause.

5. The Offer of Judgment/Proposal for Settlement shall be deemed rejected unless accepted by filing both the written acceptance and the written offer with the court within 30 days after service of the offer. In accordance with Florida Statutes § 73.032, upon proper filing of both the offer and acceptance, the Court shall enter judgment thereon. A rejection of the offer terminates the offer.

6. The Petitioner may withdraw the offer in writing served on the Defendant OLD CITY HALL ASSOCIATES, L.L.L.P., before a written acceptance is filed with the court. Once withdrawn in this manner, the offer is void.

7. In accordance with Florida Statutes § 73.032(7), the Petitioner hereby identifies and makes available to the Defendant OLD CITY HALL ASSOCIATES, L.L.L.P., the construction plans for the project on which this offer is based. The construction plans which are available to the Defendant OLD CITY HALL ASSOCIATES, L.L.L.P., are best identified as follows:

Manatee County, Florida  
Ware's Creek - Canal Dredging  
Parcel E-100  
Project No. 6028801.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to MITCHELL O. PALMER, ESQ., Williams, Parker, Harrison, Dietz & Getzen, P.A., 200 South Orange Avenue, Sarasota, Florida 34236, Attorneys for Defendant OLD CITY HALL ASSOCIATES, L.L.L.P., and MICHAEL H. ROSEN, ESQ., Saxon, Gilmore, Carraway & Gibbons, P.A., 201 E. Kennedy Blvd., Suite 600, Tampa, Florida 33602, Co-counsel for Petitioner MANATEE COUNTY, on this \_\_\_\_\_ day of August, 2010.

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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

**To:** rodney.wade@mymanatee.org

**Subject:** BCC Mtg. - 8/10/10 - Item 6

**Attachments:** BC20100810DOCA06.PDF

Hello Mr. Wade,

Attached is a stamped agenda memo on Item 6 re Eminent Domain Wares Creek, approved by BCC on 8/10/10.

Robin Liberty  
Clerk of Circuit Court  
Board Records Dept.  
(941) 749-1800, Ext. 4178  
FAX: (941) 741-4089  
robin.liberty@manateeclerk.com