

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: February 27, 2007

Consent

Regular

Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: a settlement in the amount of Two Million, Three Hundred Fifty Thousand Dollars (\$2,350,000), inclusive of attorney's fees and costs in the eminent domain action styled Palm Beach County v. Chester Archer, et al., Case No. 502006CA010884XXXXMB.

**Summary:** This is an eminent domain action in which the County is seeking to acquire seven parcels Parcel A (PCN 00414036010120020), Parcel B (PCN 00414036010120030), Parcel C (PCN 00414036010120040), Parcel D (PCN 00414036010120050), Parcel E (PCN 00414036010120140), Parcel F (PCN 00414036010120150), Parcel G (PCN 00414036010140020), for incorporation into the Cypress Creek Natural Area. The County has negotiated a proposed settlement in the amount of Two Million, Three Hundred Fifty Thousand Dollars (\$2,350,000), subject to the approval of the Board of County Commissioners. This settlement is inclusive of attorney's fees and costs. District 1 (PGE)

**Background and Justification:** The Cypress Creek Natural Area is approximately 1800 acres of environmentally sensitive land acquired by the County over the last 11 years. These seven parcels are basically the last seven to be acquired for the commencement of the hydrological portion of the restoration project within the Cypress Creek Natural Area. The purpose of this acquisition as stated in Resolution No. 2006-0269 is for passive recreation, environmental education and scientific research, hydrologic/environmental restoration, use as a wildlife corridor, greenway, conservation area and natural area, and enhancement of local surface and groundwater quality and quantity. The Board previously approved a Budget Transfer of \$5,750,000 in the Conservation Lands Bond Fund for acquisition of 12 parcels, including these 7 parcels. This transfer represented the value of the land to be taken, improvements, and severance damages. The Board previously approved an offer prior to initiating eminent domain proceedings in the amount of \$1,764,000 for these seven parcels. The property owners made a counter-offer for settlement in the amount of \$3,500,000, but will accept a compromise settlement of \$2,350,000, including attorney fees and costs, subject to the approval of the Board of County Commissioners.

This proposed settlement is cost-effective in light of the expense and risk of seeking a judicial resolution through a jury trial. Therefore, it is recommended that this settlement be approved in the amount of Two Million, Three Hundred Fifty Thousand Dollars (\$2,350,000).

**Attachments:**

1. Signed Joint Motion and Proposed Stipulated Order of Taking and Final Judgment

Recommended by:



Department Director

1/25/07

Date

Approved by:

N/A

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	<u>\$2,350,000</u>	—	—	—	—
Operating Costs	—	—	—	—	—
External Revenues	—	—	—	—	—
Program Income (County)	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—
<b>NET FISCAL IMPACT</b>	<b><u>\$2,350,000</u></b>	—	—	—	—
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	—	—	—	—	—

Is Item Included in Current Budget? Yes X No \_\_\_

Budget Account Nos.: Fund 3001 Department 381 Unit E406 Object 6101  
 Fund 3002 Department 381 Unit E406 Object 6101

Reporting Category \_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

1999 Conservation Bond Fund - \$169,612  
 2001 Conservation Bond Fund - \$2,180,388  
2,350,000

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:** Two budget transfers under a separate ERM agenda item for the 2/27/07 BCC meeting; Fund 3002 - 2,005,602 (plus existing balance 174,786) = 2,180,388, and Fund 3001 - 190,000. to establish a total project budget of 2,370,388.

*Elizabeth Libal*  
 1/30/07 OFMB *ce* 1/31/07

*Jim J. Jacobs*  
 Contract Dev. and Control 1/31/07

**B. Legal Sufficiency:** *1/30/2007*  
*Penelope G. Edelberg*  
 Assistant County Attorney

**C. Other Department Review:**

*Bobt. [Signature]*  
 Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

PALM BEACH COUNTY, a political  
subdivision of the State of Florida,

Petitioner,

v.

CHESTER ARCHER, et al.

Respondents.

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IN THE CIRCUIT COURT OF THE 15<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR PALM  
BEACH COUNTY, FLORIDA

CASE NO. 502006CA010884XXXXMB

PARCELS:

A (PCN 00414036010120020)

B (PCN 00414036010120030)

C (PCN 00414036010120040)

D (PCN 00414036010120050)

E (PCN 00414036010120140)

F (PCN 00414036010120150)

G (PCN 00414036010140020)

**AGREED STIPULATED ORDER OF TAKING AND FINAL JUDGMENT**

**THIS CAUSE** having come before the Court on the Joint Motion by Petitioner, Palm Beach County, by and through its undersigned Assistant County Attorney, and Respondents, by and through Tobyn DeYoung, Esq., and the Court being fully advised in the premises, hereby finds and decides as follows:

1. The Court has jurisdiction over the subject matter of, and the parties to this cause.

2. The pleadings in this cause are sufficient, and Petitioner is properly exercising its delegated authority of eminent domain in furtherance of the acquisition of this property for the incorporation into the Cypress Creek Natural Area and to provide opportunities for passive recreation, environmental education and scientific research; hydrologic/environmental restoration, use as a wildlife corridor, greenway, conservation area, natural area, and wetland preservation and restoration area; and the enhancement of local surface and groundwater quality and quantity.

3. The estimate of value for the parcels set forth below and filed in this cause by Petitioner was made in good faith.

4. The sum of money which represents Petitioner's good faith estimate of value for the parcels taken is as follows:

Parcel No. A (PCN 00414036010120020)	\$255,500.00
Parcel No. B (PCN 00414036010120030)	\$231,000.00
Parcel No. C (PCN 00414036010120040)	\$231,000.00
Parcel No. D (PCN 00414036010120050)	\$231,000.00
Parcel No. E (PCN 00414036010120140)	\$280,000.00
Parcel No. F (PCN 00414036010120150)	\$255,500.00
Parcel No. G (PCN 00414036010140020)	\$280,000.00

5. Respondents shall have and recover the total sum of Two Million, Three Hundred Thousand Dollars (\$2,300,000.00), as full, just and final compensation to the Respondents for the taking of these parcels, which sum excludes costs, but includes reasonable attorneys fees, less estimated ad valorem and non-ad valorem taxes due.

6. Petitioner shall deposit the sum of Two Million, Three Hundred Thousand Dollars (\$2,300,000.00), plus One Hundred Fifty Dollars (\$150.00) as the fee for the Clerk of the Court, for a total amount of **Two Million, Three Hundred Thousand, One Hundred Fifty Dollars (\$2,300,150.00)**, into the Registry of the Court within twenty (20) days after entry of this Stipulated Order of Taking and Final Judgment.

7. Upon deposit by Petitioner into the Registry of the Court of the sums referenced herein, the fee simple title and possession to the property identified as Parcel Nos. A through G and described in **Exhibit "A"** attached hereto shall vest in the Petitioner.

8. Upon deposit of the sums referenced herein, the Clerk of the Court is directed to immediately disburse a portion of said sum in the amount of **Two Million, Two Hundred Ninety Nine Thousand, Four Hundred Ninety Six Dollars and 52/00 Cents, (\$2,299,496.52)** by check made payable to **Sachs & DeYoung Trust Account**, and mail same **c/o D. Tobyn DeYoung, Esq., 1061 East Indiantown Rd., Suite #414**,

**Jupiter, FL 33477**, without any further Order of this Court, who shall be responsible to make the appropriate disbursements.

9. Respondents shall also have and recover from Petitioner, Palm Beach County, statutory costs in the amount of \$50,000.00. Accordingly, Petitioner, Palm Beach County, within twenty (20) days after entry of this Stipulated Order of Taking and Final Judgment, shall issue a check in the total amount of FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00) made payable to **Sachs & DeYoung Trust Account** and mail same **c/o D. Tobyn DeYoung, Esq., 1061 East Indiantown Rd., Suite #414, Jupiter, FL 33477**, without further Order of this court, who shall be responsible to make the appropriate disbursements.

10. Upon deposit of the sums referenced herein, the Clerk of Court is further directed to immediately disburse the **sum of Five Hundred Three Dollars and 48/00 Cents (\$503.48)** by check made payable to **Anne M. Gannon, Palm Beach County Tax Collector** and mail same **c/o Brian Hanlon, Esquire, Palm Beach County Tax Collector's Office, 301 N. Olive Avenue, 3<sup>rd</sup> Floor, West Palm Beach, Florida, 33401**, to satisfy all estimated ad valorem and non-ad valorem taxes due on these parcels, as follows: Parcel No. A (PCN 00414036010120020) - \$47.02, Parcel No. B (PCN 00414036010120030) - \$47.02, Parcel No. C (PCN 00414036010120040) - \$47.02, Parcel No. D (PCN 00414036010120050) - \$47.02, Parcel No. E (PCN 00414036010120140) - \$47.02, Parcel No. F (PCN 00414036010120150) - \$47.02, Parcel No. G (PCN 00414036010140020) - \$221.36.

11. In the event of any overpayment, the Tax Collector shall remit the overpayment to **D. Tobyn DeYoung, Esq., 1061 East Indiantown Rd., Suite #414, Jupiter, FL 33477**, in accordance with Florida law.

12. The sums paid to the Respondents includes all costs and attorneys fees and represents full and final compensation for the taking of Parcels A through G, and

the Respondents will not seek any further monies from the Petitioner in this cause, except as specifically set forth in paragraph 13 herein.

13. The Court reserves jurisdiction to enforce the terms of this judgment and over the apportionment or supplemental proceedings, if any.

**DONE AND ORDERED** in Chambers this \_\_\_\_\_ day of \_\_\_\_\_, 2007, in Palm Beach County, Florida.

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Jonathan D. Gerber  
Circuit Court Judge

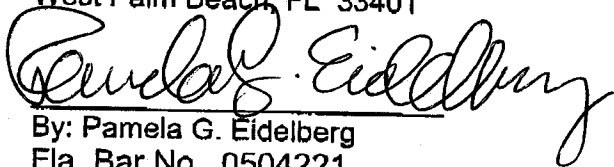
Copies furnished:

Pamela G. Eidelberg, Assistant County Attorney  
D. Toba DeYoung, Esq., Counsel for Respondents  
Brian Hanlon, Esq., PBC Tax Collector's Office  
Joe Greco, PREM, 3200 Belvedere Rd. - Bldg #1169, West Palm Beach, FL 33406 - 1544

**JOINT MOTION**

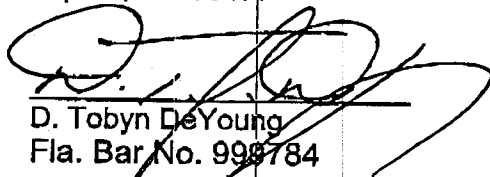
Petitioner, Palm Beach County, and Respondents, Chester L. Archer, Nyla Archer, Gary L. Archer, Gregory Archer, Andrew M. Wright, and Julia Wright, by and through the undersigned attorneys, hereby stipulate that they have resolved this case as described above, and move this Court for entry of the foregoing Stipulated Order of Taking and Final Judgment.

**Pamela G. Eidelberg, Esq.**  
Assistant County Attorney  
301 N. Olive Avenue, Ste. 601  
West Palm Beach, FL 33401



By: Pamela G. Eidelberg  
Fla. Bar No. 0504221

**D. Tobyn DeYoung, Esq.**  
Counsel for Respondents  
1061 East Indiantown Rd.  
Jupiter, FL 33477



D. Tobyn DeYoung  
Fla. Bar No. 998784

**LEGAL DESCRIPTION**

**PBC v. CHESTER ARCHER, et al.**

**Philo Farms Subdivision and the Cypress Creek Natural Area**

**PARCEL NUMBERS:** A (00414036010120020), B (00414036010120030), C (00414036010120040), D (00414036010120050), E (00414036010120140), F (00414036010120150), G (00414036010140020)

**Parcel A (PCN 00414036010120020)**

Lot B, Block 12, PHILO FARMS, in Section 36, Township 40 South, Range 41 East, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book, 3, Page 11

**Parcel B (PCN 00414036010120030)**

Lot C, Block 12, PHILO FARMS, in Section 36, Township 40 South, Range 41 East, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 3, Page 11

**Parcel C (PCN 00414036010120040)**

Lot D, in Tract 12, Section 36, Township 40 South, Range 41 East, PHILO FARMS, according to the Plat thereof, on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 3, Page 11

**Parcel D (PCN 00414036010120050)**

Lot E, Tract 12, Section 36, Township 40 South, Range 41 East, PHILO FARMS, according to the Plat thereof on file in the Office of the Clerk of Circuit Court in and for Palm Beach County, Florida, in Plat Book 3, Page 11

**Parcel E (PCN 00414036010120140)**

Lot N, in Tract 12, Section 36, Township 40 South, Range 41 East, PHILO FARMS, according to the Plat thereof, on file in the Office of the Clerk of Circuit Court in and for Palm Beach County, Florida, in Plat Book 3, Page 11

**Parcel F (PCN 00414036010120150)**

Lot O, Tract 12, PHILO FARMS SUBDIVISION, in Section 36, Township 40 South, Range 41 East, according to the plat thereof recorded in Plat Book 3, Page 11, of the Public Records of Palm Beach County, Florida

**Parcel G (PCN 00414036010140020)**

Lot B, Tract 14, PHILO FARMS SUBDIVISION, of Section 36, Township 40 South, Range 41 East, according to the Plat thereof recorded in the Office of the Clerk of the Circuit Court, in and for Palm Beach County, Florida, in Plat Book 3, Page 11

