

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: June 19, 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 \$402,800, including attorney's fees, but excluding costs, in the eminent domain action styled Palm Beach County v. Michael Martin, et al., Case No. 502005CA006339XXXMB, for the fee simple taking of 5 acres of vacant land in Indian Lake Estates.

**Summary:** The County has negotiated a settlement for parcel 4, which is 5 acres of vacant land in the Indian Lake Estates subdivision, in the amount of \$402,800, including attorney's fees, but excluding costs, subject to the approval of the Board of County Commissioners. The expert engineers and appraisers for the County and property owner agreed that the land is buildable and suitable for residential use. The County previously deposited \$190,000 as its initial good faith deposit and estimate of value. The County's appraiser updated his appraisal through the date of taking and would testify at trial that the value of the subject property is \$225,000, while the owner's expert appraiser concluded that the value of the subject property was \$450,000. The proposed settlement is \$350,000 for the value of the land, plus attorney's fees in the amount of \$52,800, that were calculated mathematically pursuant to Florida law. If this settlement is approved, the County would be required to pay an additional \$212,800, which includes attorney's fees, but excludes costs. District 1 (PM)

**Background and Justification:** The County's initial appraisal in the amount of \$190,000 for parcel 4 was done over 2 years ago. The County's review appraiser also independently appraised the subject property through the date of taking, November 9, 2005. The review appraisal amount was \$225,000, while the updated initial appraisal, on which the good faith offer was based, was \$245,000. Other 5-acre parcels in this sub-division require more mitigation to build on the land; however, according to the South Florida Water Management District, the subject parcel consisted of more uplands, thus requiring less mitigation and increasing the value of the land. Therefore, in order to minimize the County's exposure to a higher jury verdict and substantial additional costs and attorney's fees, this settlement is recommended. The proposed settlement has been approved by the Department Director.

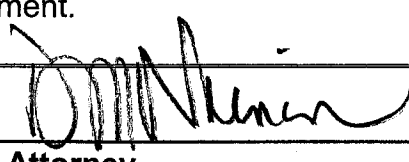
**Attachments:**

1. Report of Court Ordered Mediation dated May 24, 2007.
2. Proposed Stipulated Final Judgment.

Recommended by: \_\_\_\_\_

County Attorney

Date



6/6/07

Approved by: \_\_\_\_\_

N/A

Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	402,800	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	402,800	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

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

Budget Account No.: Fund 1226 Department 380 Unit E205 Object 6101

Reporting Category \_\_\_\_\_

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

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

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

ERM is in agreement with the settlement and related costs, as well as the budget.

*6/4/07*  
\_\_\_\_\_  
 OFMB  
*6-6-07*  
*6/4/07*  
*6/4/07*  
*6/4/07*

\_\_\_\_\_  
 Contract Development and Control  
*6/18/07*

**B. Legal Sufficiency:**

\_\_\_\_\_  
 Assistant County Attorney  
*g*

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

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

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT OF  
FLORIDA, IN AND FOR PALM BEACH  
COUNTY

P.B. County  
Plaintiff(s),

CASE NO.: 2005 CA 00-6339 AD

vs.

Richard Martin, et al.  
Defendant(s).

PARCEL 4

REPORT OF COURT ORDERED MEDIATION

A mediation conference was held on 5-24-07 for the  
above-styled case. Mediator, R. WILLIAM RUTTER, JR., conducted the proceedings.  
All parties were present.

A partial agreement was reached.

A complete agreement was reached.

The following is a synopsis of the partial or complete agreement reached:

Richard E. Walsby  
Plaintiff

Philip M. Magarino  
Plaintiff's Attorney

5-24-07  
Date

James C. Gasser  
Defendant FOR SPANISH WINDFARMERS INC.  
15 Gasser  
Defendant's Attorney

PBC

v.

Michael

Parcel 4

### MEDINATION SETTLEMENT

The parties mediated this case as to parcels 4, 7 and 9 owned by Stuart Enterprises, Inc. (parcel 4) and many T. Percival, as trustee (parcels 7 and 9), the parties have agreed and settled the case as to parcel 4, owned by Stuart Enterprises, Inc. according to the following terms:

1. The County shall pay to Respondent, Stuart Enterprises, Inc. the sum of \$350,000.00 for parcel 4 as full, and final compensation for the taking of this parcel, inclusive of all damages of any type whatsoever, excluding costs and attorneys fees.
2. Reasonable costs and attorneys fees shall be calculated pursuant to Florida law, sections 73.091 and 73.092

3. This settlement is contingent upon the approval of the Palm Beach County Board of County Commissioners.

4. The mediation shall be continued as to parcels 7 and 9, owned by Wm T. Percival, as trustee.

5. The Representatives of the County and parcel 4, Stuart Enterprises, Inc. have executed this agreement as indicated below.

Philip Magavero

Philip Magavero, Esq.  
Ass. Cty. Attorney

H. Adams Weaver

H. ADAMS WEAVER, Esq.  
Attorney for Respondent,  
Stuart Enterprises, Inc.

Richard Ewelby

RICHARD MALOSKY  
DIRECTOR, PBC Dept.  
ENV. Resource mgmt.

Gary Kresser

GARY KRESSER  
Attorney for - FACT  
for Stuart Enterprises

DATED May 24, 2007.

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN  
AND FOR PALM BEACH COUNTY,  
FLORIDA.

CASE NO: 2005 CA 00-6339 AD

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

Petitioner,

v.

**PARCEL 4**

MICHAEL MARTIN, et al.,

Respondents.

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### STIPULATED FINAL JUDGMENT

This cause having come before the Court upon the Joint Motion set forth below and the Court being fully advised in the premises, it is therefore

#### ORDERED AND ADJUDGED:

1. Respondent, STUART ENTERPRISES, INC., shall have and recover from Petitioner, PALM BEACH COUNTY, the sum of \$350,000.00 in full payment for the taking of Parcel 4, including damages arising therefrom, if any. Respondent shall recover the sum of \$52,800.00 for attorney's fees.
2. The Petitioner, having previously deposited the sum of \$190,000.00 into the Registry of this Court, shall, within twenty (20) days of receipt of a certified copy of this Stipulated Final Judgment, and without further order of this Court, issue a check in the amount of \$212,800.00 payable to Jones, Foster, Johnston & Stubbs, P.A., Trust Account, and mail said check to H. Adams Weaver, Esquire, Post Office Box 3475, West Palm Beach, Florida 33402-3475, for appropriate disbursement of the settlement amount and attorney's fees.

3. The vesting of title to Petitioner as to Parcel 4 is hereby approved, ratified and confirmed.

4. The Court reserves jurisdiction to tax reasonable costs against Petitioner.

DONE AND ORDERED at Palm Beach County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CIRCUIT COURT

Copies furnished to below listed counsel.

**JOINT MOTION**

Petitioner, PALM BEACH COUNTY, and Respondent, STUART ENTERPRISES, INC., move together for entry of the Stipulated Final Judgment set forth above and state that they are authorized to enter into this Joint Motion.

AGREED to this 29<sup>th</sup> day of May, 2007.

PALM BEACH COUNTY  
ATTORNEY'S OFFICE  
Attorney for Petitioner  
301 North Olive Avenue  
Seventh Floor  
West Palm Beach, FL 33401  
(561) 355-6717

By

  
PHILIP MUGAVERO  
FLORIDA BAR NO: 931179

JONES FOSTER JOHNSTON  
& STUBBS, P.A.  
Attorney for STUART ENT.  
505 South Flagler Drive  
Suite 1100  
West Palm Beach, FL 33402  
(561) 659-3000

By

  
H. ADAMS WEAVER  
FLORIDA BAR NO: 125210