

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: July 24, 2007 ☐ Consent ☒ Regular
☐ Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: **A)** Allocation of funds for the hiring of expert witnesses and consultants including appraisers, certified public accountants, land planners and other experts reasonably necessary in defense of the pending inverse condemnation lawsuit styled Mizner Trail Golf Club, Ltd., a Florida limited partnership, Plaintiff v. Palm Beach County, Florida, Defendant, Fifteenth Judicial Circuit, Case No. 2006CA004094XXXXMBAO. The payment for expert witnesses and consultants includes litigation support services, reimbursement of reasonable expenses and litigation costs. The cumulative amount of these costs and services shall not exceed the total sum of \$350,000; and **B)** Budget Transfer of \$350,000 in the General Fund – from Contingency Reserves to the General Government – Expert Witness Fees line.

Summary: The funding for expert witnesses, consulting, and litigation support services are reasonable and necessary for the County to properly and competently defend itself in the Mizner litigation. To the extent any portion of the allocated funds are unused during the pendency of the litigation, the remaining funds will be carried over to fiscal year 2008 or returned to general fund upon conclusion of the litigation. District 4 (AMP) (PM)

Background and Justification: On February 23, 2006, the Board of County Commissioners, pursuant to Resolution No. R-2006-0283, denied, without prejudice, Mizner Trail Golf Club, Ltd.'s application for a development order amendment to redesignate the land use from a golf course to residential use to build residential units in accordance with its submitted site plan. (Continued On Page 3)

Attachments:

1. Resolution No. R-2006-2383 – Resolution Denying Zoning Application DOA2004-826 (Control No. 1984-152) Application Of Mizner Trail Golf Club, LTD.
2. Budget Transfer.

Recommended by: _____

County Attorney

Date

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	<u>\$350,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$350,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No **X**

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

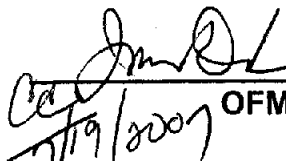
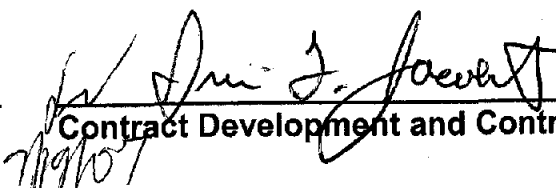
Reporting Category _____

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

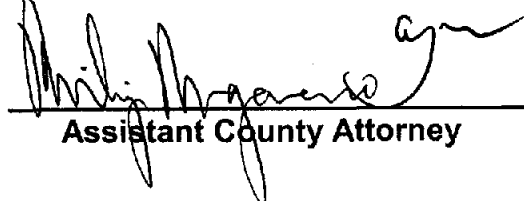
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

 7-18-07
 7/19/2007 OFMB 7/19/07
 7/20/07
 Contract Development and Control

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

Department Director

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

Background and Justification (continued):

Mizner Trail Golf Club, Ltd. filed a lawsuit against the County, alleging that the County's denial of its development order amendment violated numerous provisions of the United States and Florida Constitutions. The second amended complaint alleges 20 counts against the County, including claims for inverse condemnation, State and Federal facial and as-applied constitutional challenges to the County's Uniform Land Development Code, and State and Federal substantive and procedural due process and equal protection violation claims. Mizner Trail Golf Club, Ltd. contends that its damages exceed \$38.5 million. Based upon the complexity of the litigation and the amount of damages being sought, staff believes it is reasonable and necessary to retain expert witnesses to assist the County Attorney's Office in defending the Mizner litigation.

RESOLUTION NO. R-2006-0283

RESOLUTION DENYING ZONING APPLICATION DOA2004-826
(CONTROL NO. 1984-152)
APPLICATION OF MIZNER TRAIL GOLF CLUB, LTD.

WHEREAS, the Board of County Commissioners, as the governing body, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider applications relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Article 2 of the Palm Beach County Unified Land Development Code, have been satisfied; and

WHEREAS, Zoning Application DOA2004-826 was presented to the Board of County Commissioners at a public hearing conducted on February 23, 2006; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the applicant and other interested parties, the recommendations of the various County review agencies, and the recommendation of the Zoning Commission; and

WHEREAS, the Board of County Commissioners has considered the findings in the staff report and the following findings of fact:

1. This request is not consistent with the intent of the Palm Beach County Unified Land Development Code.
2. This request does not minimize adverse effects on adjacent lands.
3. This request would cause loss of an integral open space component and unifying element of an established community.
4. This request is inconsistent with provisions of the Palm Beach County Unified Land Development Code regarding layout, function, and general development characteristics.
5. This request is not supported by changed circumstances that require a modification.

WHEREAS, Article 2 of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application DOA2004-826, the Application of Mizner Trail Golf Club, Ltd., by Sanders Planning Group, P.A., agent, for a Development Order Amendment to redesignate land use from golf course to residential, add units, and add an access point in the Residential Planned Unit Development District, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was denied on February 23, 2006, without prejudice.

0246

Commissioner McCarty moved for approval of the Resolution.

The motion was seconded by Commissioner Marcus and, upon being put to a vote, the vote was as follows:

Tony Masilotti, Chair	¥	Aye
Addie L. Greene, Vice Chairperson	¥	Aye
Karen T. Marcus	¥	Aye
Jeff Koons	¥	Absent
Warren H. Newell	¥	Aye
Mary McCarty	¥	Aye
Burt Aaronson	¥	Absent

The Chairman thereupon declared the resolution was duly passed and adopted on February 23, 2006.

Filed with the Clerk of the Board of County Commissioners on 23rd day of February, 2006.

This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

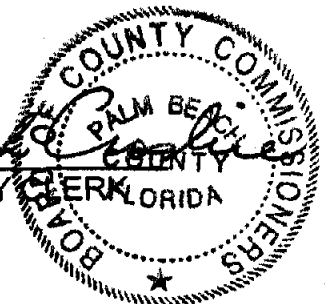
SHARON R. BOCK,
CLERK & COMPTROLLER

BY:


COUNTY ATTORNEY

BY:


DEPUTY CLERK



0247

EXHIBIT A

R2006 0283

LEGAL DESCRIPTION

TRACTS 64 B AND 64 C, BOCA DEL MAR NO. 7, ACCORDING TO THE PLAT THEREOF; AS RECORDED IN PLAT BOOK 30, PAGES 210 THROUGH 217 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

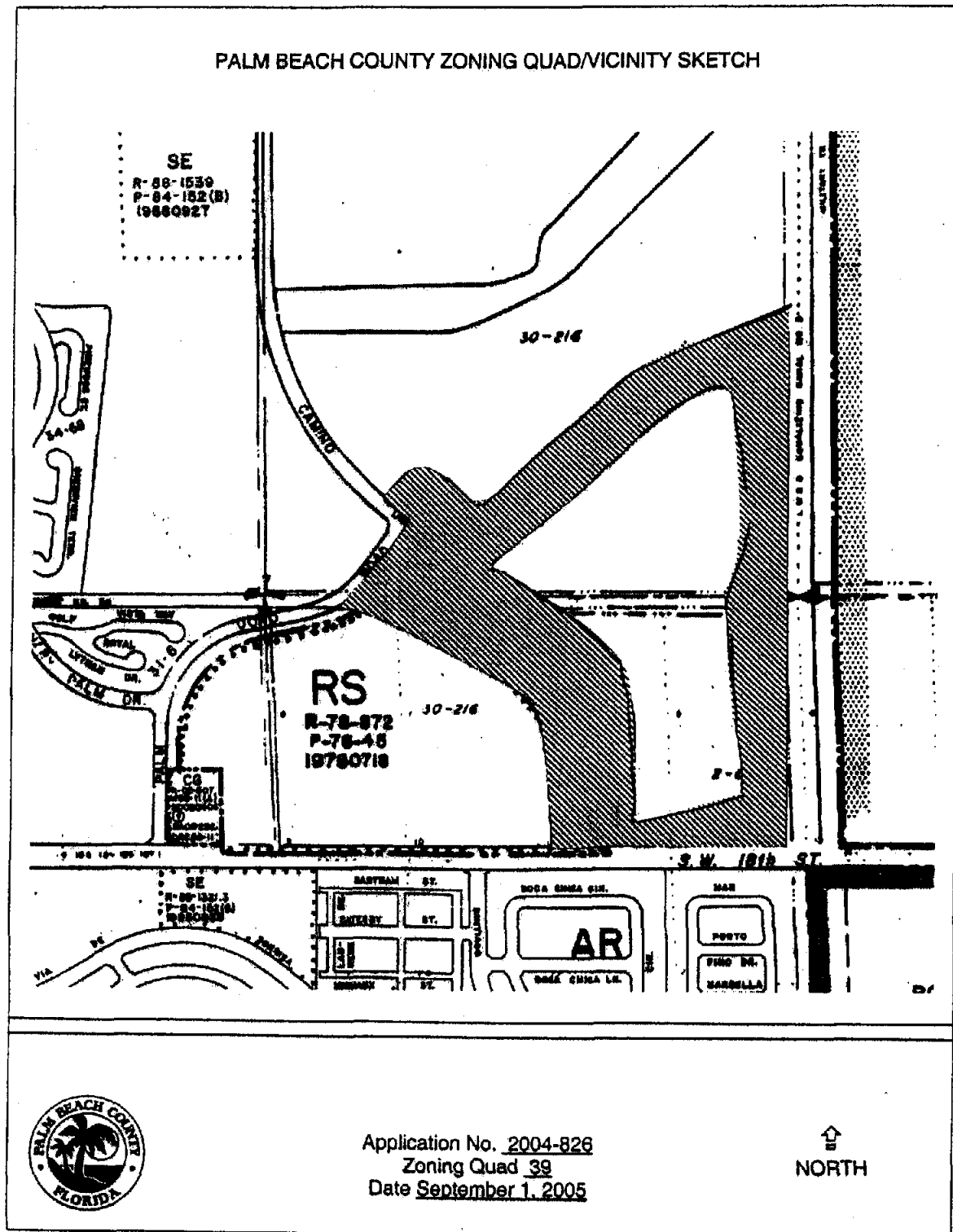
0248

Application DOA2004-826
Control No. 1984-152
Project No 00205-000

Page 3

R2006 0283

EXHIBIT B
VICINITY SKETCH



0249

Application DOA2004-826
Control No. 1984-152
Project No 00205-000

Page 4

R2006 0283

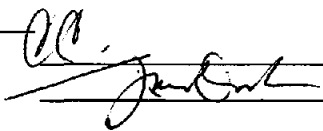
07- 1218

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER

FUND 0001

Use this form to provide budget for items not anticipated in the budget.

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF	REMAINING BALANCE
<u>EXPENDITURES</u>								
820-9900-9901	Contingency Reserves	20,000,000	11,655,741		350,000	11,305,741	0	11,305,741
760-7601-4923	Expert Witness Fees	0	0	350,000		350,000	0	350,000
Total Appropriations & Expenditures		<u>1,031,254,533</u>	<u>1,074,730,911</u>	<u>350,000</u>	<u>350,000</u>	<u>1,074,730,911</u>	<u>0</u>	<u>1,074,730,911</u>

<u>INITIATING DEPARTMENT/DIVISION</u> Administration/Budget Department Approval OFMB Department - Posted	<u>Signatures</u> 	<u>Date</u> <u>7-19-07</u>	<u>By Board of County Commissioners</u> <u>At Meeting of</u> <u>7/24/07</u> <u>Deputy Clerk to the</u> <u>Board of County Commissioners</u>
--	---	-------------------------------	--