

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 11, 2007 [X] Consent [] Regular
[] Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

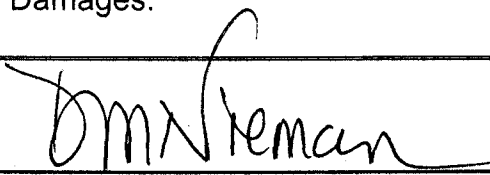
Motion and Title: Staff recommends motion to approve: a settlement in the amount of \$129,850, including attorney's fees, but excluding costs, in the eminent domain action styled Palm Beach County v. Maria Mink, et al., Case No. 502006CA010149XXXMB, for business damages as to Southern Gardens Nursery, operated by this business tenant on parcel 103.

Summary: The County has negotiated a business damage settlement in the amount of \$129,850, including attorney's fees, but excluding costs, subject to the approval of the Board of County Commissioners, for business damages to Southern Gardens Nursery being operated on parcel 103. Pursuant to Section 73.015, Florida Statutes (2006), the business tenant made an initial good faith offer in the amount of \$194,266 to settle its business damage claim. Pursuant to the same Statute, the County timely made a counter business damage offer in the amount of \$70,000. At mediation the County entered in to a proposed business damage settlement in the amount of \$115,000, subject to approval of the Board of County Commissioners. Attorney's fees in the amount of \$14,850 were calculated mathematically pursuant to Florida law, making the total settlement amount, inclusive of attorney's fees, but excluding costs, \$129,850. If this settlement is approved, the County would be required to pay \$129,850 to fully fund this settlement, excluding costs, because in the case of business damages there is no initial deposit made in to the Registry of the Court. District 6 (PM)

Background and Justification: The taking of property on parcel 103 negatively impacted the drainage on the subject property, thus negatively effecting the Nursery's ability to maintain its current profit level. As a result, the business tenant, Southern Gardens Nursery, submitted its business damage offer, including costs to cure in the amount of \$194,266. After making significant adjustments to the business owners cost to cure and proposing its own alternate cure, the County was able to reduce the business damages to the nursery and reduce the cost to cure. As a result, at mediation the County entered in to a settlement of \$115,000 for all business damages and cure, subject to the approval of the Board of County Commissioners. **(Continued on Page 3)**

Attachments:

- 1. Order Awarding Business Damages.

Recommended by:  8/22/07
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	\$129,850	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$129,850	-0-	-0-	-0-	-0-

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes X No
Budget Acct No.: Fund 3503 Dept. 361 Unit 0725 Object 6120
Program

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

Road Impact Fee Fund - Zone 3
Seminole Pratt/SR 80 to S of Okeechobee Blvd

Business Damages, Including Attorney Fees \$129,850.00

C. Departmental Fiscal Review: R. S. Ward 8/28/07

III. REVIEW COMMENTS

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

[Signature] 8.29.07
OFMB
[Signature] 8/30/07
Contract Dev. and Control
[Signature] 8/30/07

B. Approved as to Form and Legal Sufficiency:

[Signature]
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):

Attorney's fees calculated pursuant to Florida law are \$14,850. The total proposed settlement, including attorney's fees, but excluding costs, is \$129,850, and was approved by the Engineering Department, the County's business damage expert, and the County's appraiser. Therefore, in order to minimize the County's expose to additional damages and substantial additional costs and attorney's fees, this settlement is recommended and very favorable to the County.

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

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

CASE NO: 502006CA010149XXXMBAG

Petitioner,

v.

MARIA MINK, as Trustee of the Maria
Mink Living Trust Agreement Dated
July 27, 1998, et al.,

PARCEL: 103

Respondents.

ORDER AWARDING BUSINESS DAMAGES

THIS CAUSE having come before the Court upon the mediated settlement of the parties, and the Court having reviewed the file and been advised of the agreement of the parties, it is hereby,

ORDERED AND ADJUDGED as follows:

1. Petitioner, Palm Beach County shall within thirty (30) days from the date of entry of this Order, pay the business owner, **Southern Gardens Nursery, Inc.**, business damages in the amount of **One Hundred Fifteen Thousand Dollars and 00/100 (\$115,000.00)**, as and for all business damages of any type whatsoever, by check made payable to **Jones, Foster, Johnston & Stubbs, P.A., Trust Account** and mail same to H. Adams Weaver, Esquire, Post Office Box 3475, West Palm Beach, Florida, 33402-3475.

2. Petitioner, Palm Beach County shall also pay attorneys fees calculated mathematically pursuant to Florida law in the amount of **Fourteen Thousand Eight Hundred Fifty Dollars and 00/100 (\$14,850.00)** by check made payable to **Jones, Foster, Johnston & Stubbs, P.A., Trust Account** and mail same to H. Adams Weaver, Esquire, Post Office Box 3475, West Palm Beach, Florida, 33402-3475, within thirty (30) days from the date of entry of this Order.

3. The Court shall reserve jurisdiction to award the Respondent's expert fees and costs pursuant to Florida law.

DONE AND ORDERED in chambers this _____ day of August, 2007, in West Palm Beach, Palm Beach County, Florida.

HONORABLE JOHN J. HOY
Circuit Judge

Copies furnished to:

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Assistant County Attorney
Palm Beach County Attorney's Office
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