Agenda Item #: 3D-6

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date:	September 11, 2007	 Consent Public Hearing	[]	Regular	
Department					
Submitted By:	COUNTY ATTORNEY				
Submitted For:					

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a settlement in the amount of \$161,962, including attorney's fees, but excluding costs, in the eminent domain action styled <u>Palm Beach County v. Maria Mink, et al.</u>, Case No. 502006CA010149XXXXMB, for the taking of parcels 104/238/304, owned by Ronald L. Schwartz, Cheryl K. Schwartz and occupied by a business tenant, Country West Landscaping, Inc.

Summary: The County has negotiated a settlement in the amount of \$161,962, including attorney's fees, but excluding costs, subject to the approval of the Board of County Commissioners, for parcels 104/238/304, which includes compensation for the land taken and all damages of any type, including business damages. The County previously deposited \$86,100 as its initial good faith deposit and estimate of value for the land taken and the improvements thereon. The proposed settlement is \$145,000 for the land taken, the improvements, and all other damages, including business damages, plus attorney's fees in the amount of \$16,962, calculated mathematically pursuant to Florida law. The total settlement including attorney's fees, but excluding costs, is \$161,962. If this settlement is approved, it would require the County to pay an additional \$75,862 to fully fund the settlement, excluding costs. District 6 (PM)

Background and Justification: The County's combined initial good faith offer and business damage counter-offer was \$93,600. The property and business owners were seeking a combined \$208,261 for the land taken, the improvements thereon, and all damages of any type, including business damages. The proposed settlement in the amount of \$145,000 as full and final compensation to the property and business owners eliminates all risk of an adverse jury verdict, and liability for substantial additional costs and attorney's fees, that would greatly exceed the proposed settlement. The total proposed settlement, including attorney's fees, but excluding costs, is \$161,962, 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 exposure to additional damages and substantial additional costs and attorney's fees, this settlement is recommended and very favorable to the County.

Attachments:

1. Stipulated Final Judgment.

Recommended by:	MANLEman	8/22/07
	County Attorney	Date
Approved by:	N/A	
		Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years Capital Expanditures	2007	2008	2009	2010	2011	
Capital Expenditures Operating Costs	<u>\$75,862</u> -0-			<u> </u>	<u>-0-</u>	
External Revenues	<u>-0-</u> -0-	<u>-0-</u> -0-	<u>-0-</u> -0-	<u>-0-</u> -0-	<u>-0-</u> -0-	
Program Income (County)	-0-	-0-	-0-	-0-	-0-	
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-	
NET FISCAL IMPACT	\$75,862	-0-	-0-		-0-	
# ADDITIONAL FTE						
POSITIONS (Cumulative)	••••••••••••••••••••••••••••••••••••••					
Is Item Included in Current Budget? Yes X No						
Budget Acct No.: Fund <u>3503</u> Dept. <u>361</u> Unit <u>0725</u> Object <u>6120</u> . Program						
-						
B. Recommended Source	s of Funds/	Summary of	f Fiscal Imp	act:		

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

Business Damages, Including Attorney Fees Paid Into Registry-Appraisel Fiscal Impact S161,962.00 S161,962.00 S161,962.00 S161,962.00

C. Departmental Fiscal Review: _.

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III. REVIEW COMMENTS

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

8.19.0 Mederi

30/07 Contract Dev. and Ø,

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

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

v.

Petitioner,

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

Respondents.

STIPULATED FINAL JUDGMENT AS TO PARCELS 104/238/304 OWNED BY RONALD L. SCHWARTZ, CHERYL K. SCHWARTZ AND THE BUSINESS TENTANT, COUNTRY WEST LANDSCAPING, WITH DIRECTIONS FOR DISBURSEMENT

THIS CAUSE having come before the Court on the mediated settlement, by Petitioner, Palm Beach County, by and through its undersigned Assistant County Attorney, and H. Adams Weaver, Esquire, Attorney for the Respondents, Ronald L. Schwartz, Cheryl K. Schwartz and the business tenant, Country West Landscaping, 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. Respondents, Ronald L. Schwartz, Cheryl K. Schwartz and the business tenant, Country West Landscaping, shall have and recover the sum of **ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS AND 00/100 CENTS (\$145,000.00),** as full, just and final compensation, including business damages, for the taking of Parcels 104/238/304, excluding costs and attorneys fees, which shall be calculated based on benefits achieved basis pursuant to Florida law. There are no taxes due on Parcels 104/238/304.

3. The sum of EIGHTY-SIX THOUSAND ONE HUNDRED DOLLARS AND 00/100 (\$86,100.00) having been previously deposited by Petitioner into the Registry of the Court pursuant to the Order of Taking entered on January 12, 2007, and having been previously

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

CASE NO: 502006CA010149XXXXMB DIVISION: AG

PARCELS: 104/238/304

withdrawn by the Respondent, Petitioner shall receive a credit in the sum of \$86,100.00 toward the full compensation set forth in paragraph 2 above.

4. Petitioner, Palm Beach County, shall within thirty days (30) days from the date of the entry of this Stipulated Final Judgment, issue a check in the amount of **FIFTY-EIGHT THOUSAND NINE HUNDRED DOLLARS AND 00/100 (\$58,900.00)**, made payable to **JONES**, **FOSTER, JOHNSTON & STUBBS, P.A., TRUST ACCOUNT**, and mail same c/o H. Adams Weaver, Esquire, P.O. Box 3475, West Palm Beach, Florida, 33402-3475, representing the difference between the agreed upon compensation referenced in paragraph two and the amount previously deposited into the Registry of the Court for Parcels 104/238/304. Respondent's counsel shall be responsible to make the appropriate disbursements.

5. Respondents, Ronald L. Schwartz, Cheryl K. Schwartz and the business tenant, Country West Landscaping, shall also have and recover from Petitioner statutory attorneys fees in the amount of \$16,962.00. Accordingly, Petitioner, Palm Beach County, shall within thirty days (30) days from the date of the entry of this Stipulated Final Judgment, issue a check in the amount of **SIXTEEN THOUSAND NINE HUNDRED SIXTY-TWO DOLLARS AND 00/100 (\$16,962.00)** payable to **JONES, FOSTER, JOHNSTON & STUBBS, P.A., TRUST ACCOUNT**, and mail same c/o H. Adams Weaver, Esquire, P.O. Box 3475, West Palm Beach, Florida, 33402-3475, without further Order of this court.

6. Title to Parcels 104/238/304, as further described in **Exhibit "A"** attached hereto, which vested in the Petitioner pursuant to the Order of Taking and deposits previously made is hereby approved, ratified and confirmed.

7. The sums paid to the Respondents, Ronald L. Schwartz, Cheryl K. Schwartz and the business tenant, Country West Landscaping, represents full and final compensation, including business damages, for the taking of Parcels 104/238/304, and the Respondents will

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

8. A copy of the Report of Court Ordered Mediation dated August 9, 2007, will be filed with the Court.

9. The Court reserves jurisdiction to enforce the terms of this judgment, over

supplemental proceedings, if any, and to award the Respondent's expert witness 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 the parties listed below

JOINT MOTION

Petitioner, Palm Beach County, and H. Adams Weaver, Esquire, Attorney for the Respondents, Ronald L. Schwartz, Cheryl K. Schwartz and the business tenant, Country West Landscaping, hereby stipulate that they have resolved this case as described above, and move this Court for entry of the foregoing Stipulated Final Judgment.

PHILIP MUGAVERO, ESQ.

By: Philip Mugavero

Fla. Bar No. 931179

Assistant County Attorney 301 N. Olive Avenue, Suite 601 West Palm Beach, FL 33401-4791 H. ADAMS WEAVER, ESQ. Jones, Foster, Johnston & Stubbs, P.A. 505 S. Flagler Drive, Suite 1100 West Palm Beach, Florida 33401

By: H. Adams Weaver Fla. Bar No. 125210

EXHIBIT "A" SHEET I OF 2

A PORTION OF TRACT 25. ACCORDING TO THE MAP OF ENTRADA ACRES. AN UNRECORDED SUBDIVISION IN SECTION 36. TOWNSHIP 43 SOUTH, RANGE 40 EAST. PALM BEACH COUNTY. FLORIDA. AS SAID TRACT IS SHOWN ON SAID SUBDIVISION RECORDED IN OFFICIAL RECORDS BOOK 2831. PAGES 239 AND 240. PUBLIC RECORDS OF PALM BEACH COUNTY. FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTH OUARTER (N 1/4) CORNER OF SAID SECTION 36; THENCE NORTH B8°50'02" WEST ALONG THE NORTH LINE OF SAID SECTION 36 A DISTANCE OF 1026.60 FEET TO THE EXISTING EAST RIGHT OF WAY LINE OF SEMINOLE-PRATT WHITNEY ROAD AS SHOWN ON ROAD PLAT BOOK 4 AT PAGES 34 THROUGH 40 OF THE PUBLIC ROCORDS OF PALM BEACH COUNTY. FLORIDA; THENCE SOUTH 01°32'25" WEST ALONG SAID EXISTING EAST RIGHT OF WAY LINE OF SEMINOLE-PRATT WHITNEY ROAD A DISTANCE OF 1624.33 FEET TO ITS INTERSECTION WITH THE CENTERLINE OF VELAZOUEZ BLVD. AS SHOWN ON SAID MAP OF ENTRADA ACRES AND THE POINT

THENCE SOUTH 88°27'35" EAST ALONG SAID CENTERLINE OF VELAZOUEZ BLVD. A DISTANCE OF 35.00 FEET; THENCE NORTH 01°32'25" EAST A DISTANCE OF 30.00 FEET; THENCE NORTH 43°27'35" WEST A DISTANCE OF 35.36 FEET; NORTH 01°32'25" EAST ALONG A LINE 10 FEET OF WAY OF PARALLEL WITH (AS MEASURED AT RIGHT ANGLES TO) SAID EXISTING EAST RIGHT BOUNDARY OF SEMINOLE-PRATT WHITNEY ROAD A DISTANCE OF 489.51 FEET TO THE NORTH A DISTANCE OF 10.00 FEET; THENCE NORTH 88°27'35" WEST ALONG SAID NORTH BOUNDARY RIGHT OF WAY OF SEMINOLE-PRATT WHITNEY ROAD A DISTANCE OF 544.51 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA AND CONTAIN 6508 SOUARE FEET, MORE OR LESS.

BEARINGS SHOWN HEREON ARE RELATIVE TO THE NATIONAL OCEAN SERVICE. TRANSVERSE MERCATOR COORDINATES, FLORIDA EAST ZONE, NORTH AMERICAN DATUM (NAD) OF 1983 (1990 ADJUSTMENT) THE GRID BEARING BEING NORTH 01°32'25" EAST ALONG THE CENTERLINE OF SEMINOLE-PRATT WHITNEY ROAD.

SURVEYOR'S CERTIFICATION

> I HEREBY CERTIFY THAT THE ATTACHED SKETCH AND THE ABOVE LEGAL DESCRIPTION ARE TR AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THE ATTACHED SKETCH AND ABOVE LEGAL DESCRIPTION MEET THE INTENT OF THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA AS SET FORTH BY T FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO SECTION 472.027. FLORIDA STATUTES AND ADOPTED IN CHAPTER GIGIT-6, FLORIDA ADMINISTRATIVE CODE. TRUE THE

NOT VALID UNLESS EMBOSSED WITH SURVEYORS SEAL. XATHERINE E. BANKO PROFESSIONAL SURVEYOR AND MAPPER NO. 5503, STATE OF FLORIDA LB NO. 7334

LB NO. 7334



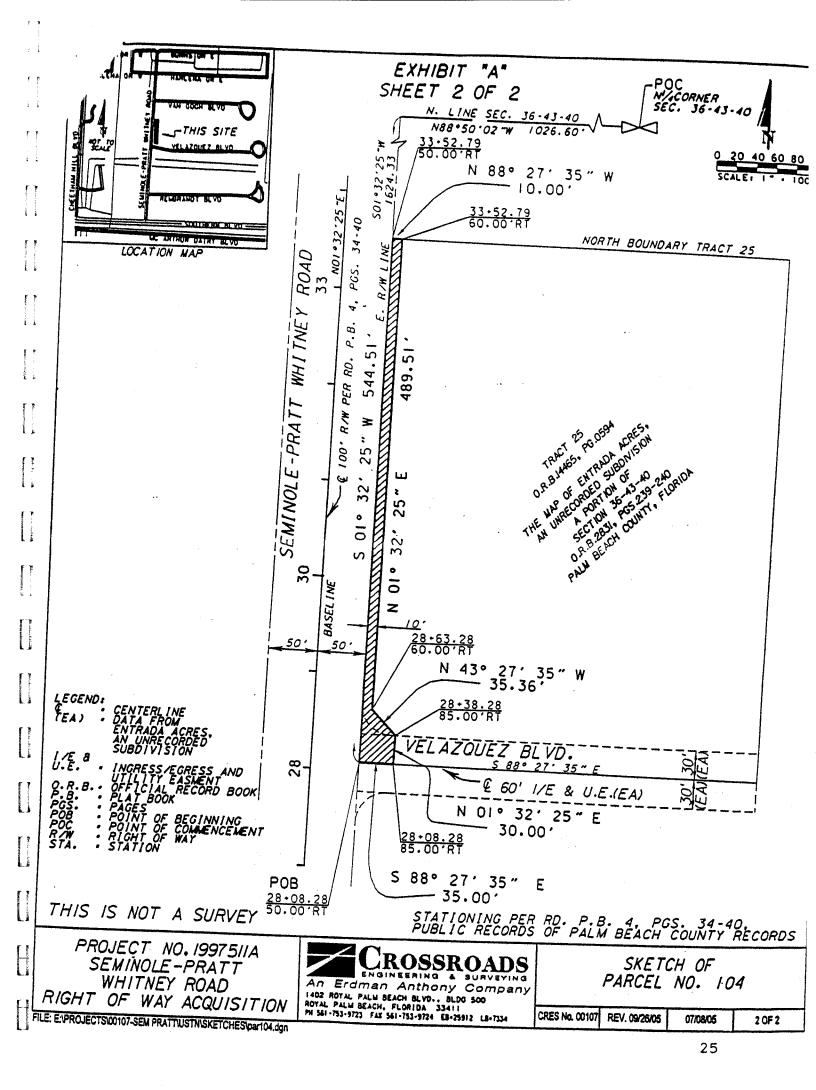


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THENCE NORTH 01°32'25" EAST A DISTANCE OF 30.00 FEET; THENCE SOUTH 88°27'35" EAST ALONG A LINE 30 FEET NORTH OF AND PARALLEL WITH (AS MEASURED AT RIGHT ANGLES TO) SAID CENTERLINE OF VELAZQUEZ BLVD. A DISTANCE OF 365.64 FEET TO THE EAST BOUNDARY OF SAID TRACT 25; THENCE SOUTH 01°32'25" WEST ALONG SAID EAST BOUNDARY A DISTANCE OF 30.00 FEET; THENCE NORTH 88°27'35" WEST ALONG SAID CENTERLINE OF VELAZQUEZ BL A DISTANCE OF 365.64 FEET TO THE POINT OF BEGINNING. VELAZQUEZ BLVD.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA AND CONTAIN 10969 SQUARE FEET. MORE OR LESS.

BEARINGS SHOWN HEREON ARE RELATIVE TO THE NATIONAL OCEAN SERVICE, TRANS MERCATOR COORDINATES, FLORIDA EAST ZONE, NORTH AMERICAN DATUM (NAD) OF (1990 ADJUSTMENT) THE GRID BEARING BEING NORTH 01°32'25" EAST ALONG THE CENTERLINE OF SEMINOLE-PRATT WHITNEY ROAD. TRANSVERSE 1983

SURVEYOR'S CERTIFICATION

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NOT VALID UNLESS EMBOSSED WITH SURVEYORS SEAL.

3-31-06

TERRY & LAIRD PROFESSIONAL SURVEYOR AND MAPPER NO. 5617 STATE OF FLORIDA · 5617 STATE OF FLORIDA NO. 7334 LB

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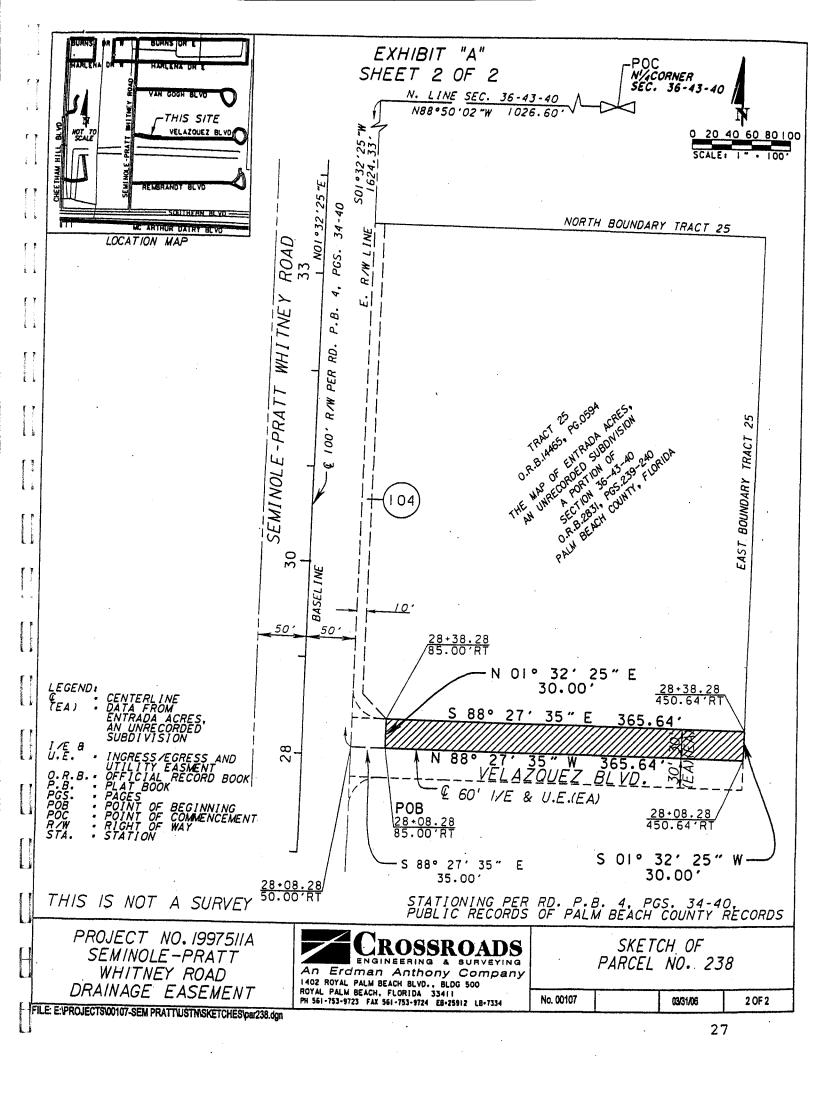


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THENCE NORTH 43°27'35" WEST A DISTANCE OF 5.66 FEET; THENCE NORTH OI°32'25" EAS ALONG A LINE IO FEET EAST OF AND PARALLEL WITH (AS MEASURED AT RIGHT ANGLES TO) SAID EAST RIGHT OF WAY LINE A DISTANCE OF 489.51 FEET TO THE NORTH BOUNDARY OF SAID TRACT 25; THENCE SOUTH 88°27'35" EAST ALONG SAID NORTH BOUNDARY OF SAID TR, 25 A DISTANCE OF 4.00 FEET; THENCE SOUTH OI°32'25" WEST ALONG THE LINE I4 FEET E OF AND PARALLEL WITH (AS MEASURED AT RIGHT ANGLES TO) SAID EAST RIGHT OF WAY LIN A DISTANCE OF 493.51 FEET TO THE POINT OF BEGINNING. F SAID TRACT 14 FEET EAST LINE

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA AND CONTAIN 1966 SQUARE FEET. MORE OR LESS.

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NOT VALID UNLESS ENBOSSED WITH SURVEYORS SEAL.

KAVHERINE 2. BANKO PROFESSIONAL SURVEYOR AND MAPPER NO. 5503, STATE OF FLORIDA

NO. 550 LB NO. 5503, S 10, 7334



