

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

Meeting Date: November 6, 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 \$293,527, including attorney's fees, but excluding costs, in the eminent domain action styled Palm Beach County v. Maria Mink, et al., Case No. 502006CA010149XXXXMB, for the taking of parcels 106 and 306, owned by Michael W. Catron and Linda Catron, and occupied by a business tenant, Southern Native Nursery, Inc.

Summary: The County has negotiated a settlement in the amount of \$250,000, excluding attorney's fees and costs, subject to the approval of the Board of County Commissioners, for parcels 106 and 306, which includes compensation for the land taken, the improvements, and all other damages of any type, including business damages. The County previously deposited \$18,100 as its initial good faith deposit and estimate of value for the land taken and the improvements thereon. The property owners and business tenant were seeking total damages in the amount of \$493,818. The proposed settlement is \$250,000 for the land taken, the improvements, and all other damages, including business damages, plus attorney's fees in the amount of \$43,527, calculated mathematically pursuant to Florida law. The total settlement including attorney's fees, but excluding costs, is \$293,527. If this settlement is approved, it would require the County to pay an additional \$275,427 to fully fund the settlement, excluding costs. District 6 (PM)

Background and Justification: The County's combined initial good faith offer for the land and its business damage counter-offer was \$118,100. The property owner valued the land, improvements and cost to cure at \$162,037 and pursuant to Section 73.015 (2)(c), Florida Statutes (2006), made an initial offer on business damages in the amount of \$331,781. The property owner and business tenant were seeking total damages in the amount of \$493,818. The proposed settlement in the amount of \$250,000 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. **(Continued on Page 3)**

Attachments:

1. Stipulated Final Judgment.
2. Mediation Settlement Agreement.

Recommended by: _____

County Attorney

Date

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>\$275,427</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>\$275,427</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

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

Land & Improvements-Parcels 106 & 306	\$250,000.00
Attorneys Fees	\$ 43,527.00
Settlement Amount	\$293,527.00
Less Previous Deposits-Court Registry	<\$ 18,100.00>
Fiscal Impact	\$275,427.00

C. Departmental Fiscal Review: A. White for R. Ward.

III. REVIEW COMMENTS

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

[Signature] 10-18-07
OFMB
10/16/07 5/10/07 10-17-07 10/16/07

[Signature] 10/18/07
Contract Dev. and Control
10/18/07

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):

This proposed settlement 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.

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

CASE NO: 2006 CA 10149 AG

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

Petitioner,

v.

PARCELS 106/306

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

Respondents.

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 as follows:

1. Respondents, MICHAEL W. CATRON, LINDA CATRON and SOUTHERN
NATIVE NURSERY, INC., shall have and recover from Petitioner, PALM BEACH
COUNTY, the sum of \$250,000.00 in full payment for the taking of Parcels 106/306,
including damages arising therefrom, if any. Respondents shall recover the sum of
\$43,527.00 for attorney's fees.

2. The Petitioner, having previously deposited the sum of \$18,100.00 into the
Registry of this Court, shall, within thirty (30) 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 \$275,427.00 payable to Jones, Foster, Johnston & Stubbs, P.A., Trust

Account, and mail said check to H. Adams Weaver, Esquire, P. O. Box 3475, West Palm Beach, Florida 33402, for appropriate disbursement of the settlement amount and attorney's fees.

3. This Stipulated Final Judgment is predicated upon the following:

- a. PALM BEACH COUNTY will construct the project in accordance with the construction plans for Project #1997511A except that PALM BEACH COUNTY will modify the existing plans to provide a three inch back of sidewalk inlet at structure S-21. PALM BEACH COUNTY will modify the existing plans to show an I.E. (invert elevation) of 16.0 feet for the three inch pipe. In the event the elevation of 16.0 is not approved by the South Florida Water Management District, the parties agree to accept the elevation approved by the South Florida Water Management District and PALM BEACH COUNTY will revise the plans accordingly.
- b. Culverts under the driveway to the sidewalk inlet will be paid for by the Owners/Respondents.
- c. The Owners/Respondents will be responsible for any ditch or grading necessary to drain the property to the back of sidewalk inlet.
- d. PALM BEACH COUNTY will construct an in/out driveway at the existing driveway locations.

4. The vesting of title to Petitioner as to Parcels 106/306 is hereby approved, ratified and confirmed.

5. 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 Respondents, MICHAEL W. CATRON, LINDA CATRON and SOUTHERN NATIVE NURSERY, 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 _____ day of _____, 2007.

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

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

By _____
PHILIP MUGAVERO
FLORIDA BAR NO: 931179

By _____
H. ADAMS WEAVER
FLORIDA BAR NO: 125210

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

Palm Beach County

CASE NO.: 2006 CA 10/49 AG

Plaintiff(s),

vs.

Mink Parcels 106/306

Defendant(s).

REPORT OF COURT ORDERED MEDIATION

A mediation conference was held on 9/27/07 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:

See attached

Plaintiff

Defendant

Plaintiff's Attorney

Defendant's Attorney

9/27/07

Date

PBC

Case # 2006 CA 10149 AG

V.

parcels: 106/306

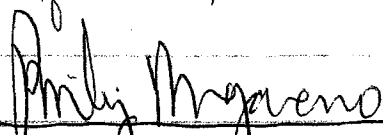
MARIA MINK et al.

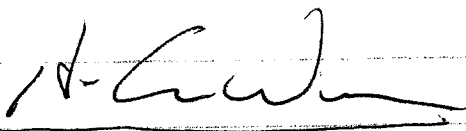
MEDIATED SETTLEMENT AGREEMENT

At the continued mediation of this case on Sept. 27, 2007, as to the above referenced parcels, the Petitioner, Palm Beach County and Respondents, Michael W. and Linda Catron, and Southern ~~Gardens~~ ^{Native} Nursery, Inc., have arrived at the following mediated Settlement:

1. The County will provide a 3 inch back of sidewalk inlet at structure S-21. The County will modify the existing plans to show an I.E. (invert elevation) of ~~16.0 feet~~ for the 3 inch pipe. In the event that the elevation of 16.0 is not approved by the SFWMD, the parties agree to accept the elevation approved by SFWMD and the County will ^{revise the plans} accordingly.
2. The culverts under the driveway will be paid for by the owners/respondents.

3. The County will not provide a ditch. The owners/respondents will be responsible for any ditch or grading necessary to drain the property to the back of sidewalk inlet.
4. The County will construct in/out driveway at the existing locations.
5. The County shall pay the owners/respondents the sum of \$250,000 as full compensation for the taking of the subject parcels.
6. This settlement resolves all damage issues between these parties, including business damages, but excluding attorneys fees and costs.
7. The County will pay the owners/respondents attorneys fees and ~~and~~ expert fees and costs pursuant to Florida law, specifically sections 73.091 and 73.092, Florida Statutes (2006).
8. This agreement is subject to the approval of the Palm Beach County Board of County Commissioners.


Philip Muraveno, Esq.
Asst. Cty. Attorney


H. Adams Weaver, Esq.
Attorney for owners/Respondents

Mr Rose

L. MORTIN Rose P.E.
manager, 5 yr. Rd. program

Michael W. Catron
Michael W. Catron

Sandra Catron
LYNN CATRON

Michael W. Catron Pres-
on behalf of Southern
~~Nakue~~ ~~Land~~ ~~Inc~~ Nursery, Inc.