

5A-2

AGENDA ITEM SUMMARY

Meeting Date: December 4, 2007 ☐ **Consent** ☒ **Regular**
 ☐ **Workshop** ☐ **Public Hearing**

Department:

Submitted By: County Administration

Submitted For: County Administration

I. EXECUTIVE BRIEF

Motion and Title: **Staff requests Board direction:** Regarding the Agreement for Purchase and Sale with WMJB Marine, Inc. (R2006-0425, 2/28/06) for the purchase of a Working Waterfront Preservation Easement and Declaration of Restrictive Covenants for \$14.0 million over 8.2 acres of the property known as Palm Beach Yacht Center (PBYC). Options include negotiating the extension of the Agreement to burden the balance of the property (1.5 acres) at no additional cost or directing the County Attorney's Office to take whatever actions necessary to void the Agreement.

Summary: The Agreement was in conformance with one of the goals of the Waterfront Preservation Bond Issue approved by the voters in 2004, which was to preserve working waterfront. It provides a restrictive easement to prevent development. This facility was viewed as particularly critical as the southerly most marine services yard in the County (just south of Hypoluxo). The County appraised the Agreement rights at \$9.3 million. PBYC continues to argue that this valuation was too low and that the \$14.0 million amount was more valid. The transaction has been completed. The Federal charges against ex-Commissioner Newell include that he had inappropriate business relationships with the ownership of PBYC that he did not publicly declare. Ex-Commissioner Newell was a strong advocate for the Agreement and it is possible that it would not have been approved, or that the price might have been lower, if the County had been aware of his relationships. Staff has sought to negotiate a reduction in the price, but this has not been accepted by PBYC due to their opinion of valuation. PBYC represents that if the County seeks to void the Agreement, and if we are successful, that this will force the closing of the facility and hasten its residential development to pay back the County. PBYC blames capital improvement needs, property taxes, insurance and fuel prices. As an alternative, PBYC is offering to encumber, at no additional cost, the balance of the property (1.5 acres) for which a development plan for approximately 40 townhomes has been contemplated. This would add substantial value to the original Agreement and provide further assurance of marine service preservation. Should the Board desire to void the Agreement, the County Attorney's Office should be directed to pursue any available legal remedies. District 4 (HF)

Background and Policy Issues: The February 28, 2006 Board Item (5H-2) without Agreement is attached.

Attachments:

1) February 28, 2006 Board Item without Agreement.

Recommended by: _____
 Department Director _____ Date _____
 Approved By: _____
 County Administrator _____ Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

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

Is Item Included In Current Budget? Yes _____ No _____
Budget Account No.: Fund _____ Dept _____ Unit _____ Object _____
Program _____

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

Jim Dool 11-27-07 OFMB/Budget
11/26/07
11/27/07
11/27/07
11/27/07
11/27/07
Contract Development and Control

B. Legal Sufficiency:

Al Jal 11/28/07
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 9/03
ADM FORM 01

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

5H-2

mk 60

Mc ads

2006/025

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	<u>14,000,000</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	 <u>14,000,000</u>	 =====	 =====	 =====	 =====
 # ADDITIONAL FTE POSITIONS (Cumulative)	 _____	 _____	 _____	 _____	 _____

Is Item Included in Current Budget: Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
Program _____

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

Funding for this project in the amount of \$14 million will be provided from the \$50 million Waterfront Preservation Bond Issue.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 2-27-06
OFMB
CDW 2/27/06

[Signature] 2/27/06
Contract Development and Control
2/27/06 At the time of CDC's

B. Legal Sufficiency:

[Signature] 2/27/06
Assistant County Attorney

*review, the Agreement for
Purchase & Sale was not
executed.*

C. Other Department Review:

Department Director

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

Background and Policy Issues continued:

The concept of preserving existing waterfront uses such as marinas and boatyards is much more complex than it appears on the surface. In order to comply with legal requirements associated with issuing General Obligation Bonds to fund the projects, the County must acquire an interest in the land, such as an easement, providing public access to the marina/boatyard. Introducing public access to operating private facilities presents unique challenges. The property owners want to be able to manage and control their business operations without undue interference, while the County needs to ensure that such public access is not infringed upon or taken away. The public easements are perpetual, yet there is no guarantee that such businesses will be operated in perpetuity. The County can not afford to purchase the property outright. The market value of the Palm Beach Yacht Center is approximately \$30 million.

In order to reduce costs, the approach was to focus on preserving the primary existing uses by restricting the land area encompassed by those uses, and allowing the owners to develop the balance of the property. The property owner did not want to limit the densities allowed in the portion of the property they can develop, and Staff agreed to rely upon physical limitations and code requirements. As such, this structure is not technically a purchase of development rights, but rather an easement limiting development area and restricting uses within that area. The Easement presented in this item is the result of lengthy negotiations with input from the County Attorney's office and outside bond counsel. While staff believes that the Easement accomplishes the objectives of preserving public access and/or working waterfront uses, there remains some risk that existing operations may change over time and the public may at some time in the future perceive that the County did not get what it paid for. A discussion of specific terms of the Easement, and the potential issues associated with each, is set forth below.

Further Development

The Boatyard, In and Out Storage Facility and 44 Boat Slips on the Submerged Land Lease shall remain open to the public. The property owner will have the right to develop other uses on 65,000 square feet of the property in the northeast section of the overall property (the "Non-Maritime Use Property"). Currently, the property owner contemplates developing approximately 40 town home units on the Non-Maritime Use property. Water retention requirements for improvements constructed on the Non-Maritime Use Property can be accommodated outside the non-Maritime Use Property, but all other requirements must be accommodated on-site. All other portions of the 9.7 acre site must be utilized for a maritime use which is compatible with the Boatyard, In and Out Storage Facility and/or Boat Slips.

Some concern was expressed during negotiations that once additional development occurs on the Non-Maritime Use Property, such as the planned town homes, the unit owners might object to the noise and activity generated by the working Boatyard and In and Out Storage Facility and make efforts to restrict those activities. However, the limited size of the Non-Maritime Use Property in relation to the overall size of the larger project (1.5 acres of the total 9.7 acres), makes it unlikely that the property owner would allow the unit owners to gain any control over such matters. There is substantial remaining value in the operating maritime facilities that the property owner would not want to see diminished.

Boatyard

The existing Boatyard must be operated and maintained on a continuous basis, but may be closed for not longer than 1 year for maintenance and/or replacement of improvements. As there are minimal improvements in the Boatyard, any such closure should be for a minimal period of time. The public (paying customers) shall have the right of access to and use of the Boatyard facilities on a first come first served basis. There are no restrictions on the rates that Boatyard customers may be charged.

In and Out Storage Facility

The existing In and Out Storage Facility currently accommodates 250 boats not more than 37 feet in length. The Facility must be continuously operated and maintained and accommodate not less than 230 boats. The owner shall have the right to temporarily close this Facility for not longer than 1 year for maintenance and/or replacement of the improvements. The public (paying customers) shall have the right of access to and use of this Facility on a first come first served basis. There are no restrictions on rates charged by the owner for use of this Facility.

Boat Slips

There are 44 boat slips located on a submerged land lease from the State. The owner must apply for renewal of the Submerged Land Lease and provided the Lease is renewed, keep the 44 slips available for lease to the public (paying customers) on a first come first served basis. There are no restrictions on the rates that can be charged for use of these slips.

There are also 40 slips on submerged land owned by the property owner. Although these slips do not have to be made available to the public, they must be kept in existence by the property owner. The property owner plans to sell these slips to purchasers of their planned town home development.

Insurance/Maintenance & Repair of Improvements

The property owner must maintain fire and extended coverage insurance on improvements in the Boatyard and In and Out Storage Facility. No insurance is required to be maintained on the Boat Slips. Windstorm insurance is not required to be maintained on any improvements. Due to the cost of windstorm insurance and the fact that a new roof rated for 140 mph winds was just installed on the In and Out Storage Facility, the owner requested that it be allowed to self insure against windstorm. In exchange, the property owner has agreed to rebuild notwithstanding the availability of insurance proceeds.

Upon approval of this Agreement, the property owner will provide the County with a title insurance commitment evidencing that there are no title matters which at closing would have priority over the County's rights under the Easement or which would otherwise materially impact the owners ability to continue operation of its business in substantially the same manner as it is doing now. The obligations of the County under this Agreement are contingent upon the County issuing bonds to fund the purchase price. The County must close this transaction, if at all, by April 1, 2006.