

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: August 19, 2008 [X] Consent [] Regular
[] Public Hearing
Department
Submitted By: COUNTY ATTORNEY
Submitted For:

I. EXECUTIVE BRIEF

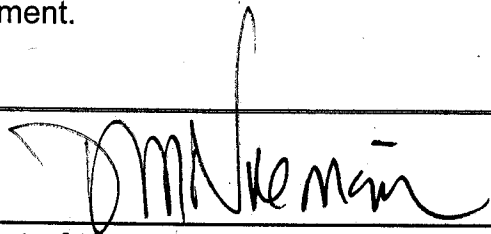
Motion and Title: Staff recommends motion to approve: a settlement in the amount of \$84,638.94 including attorney's fees, but excluding costs, in the eminent domain action styled Palm Beach County v. Diego A. Pena, et al., Case No. 502007CA001113XXXMB, for the taking of parcels 192, 292 and 392, owned by Winsome Benjamin.

Summary: The County has negotiated a settlement for parcels 192, 292 and 392 in the amount of \$84,638.94 as compensation for the land taken, including attorney's fees, but excluding costs, subject to the approval of the Board of County Commissioners. The subject property is located on Seminole Pratt Whitney Road north of Okeechobee Boulevard. The County's expert appraiser valued the subject parcels at \$57,882 with a valuation date of March 22, 2006. The property owner's expert appraiser valued the subject parcels at \$85,050. The proposed settlement is \$78,000 for the land taken, plus attorney's fees in the amount of \$6,638.94, calculated mathematically pursuant to Florida law. The total settlement including attorney's fees, but excluding costs, is \$84,638.94. If this settlement is approved, it would require the County to pay an additional \$26,756.94 to fully fund the settlement, excluding costs. District 6 (PM)

Background and Justification: The property permanently taken is a total of 12,411 sq./ft. on two sides of this single family residence. The road widening on both sides of the subject property and the related proximity to traffic flow raise to the incurable severance damages to the remainder of this property. The proposed settlement in the amount of \$84,638.94 includes attorney's fees, but excludes costs. This settlement is full and final compensation for the property taken plus all damages to the remainder and eliminates all risk of an adverse jury verdict and liability for additional costs and attorney's fees. In order to minimize the County's exposure and substantial additional costs and attorney's fees, this settlement is recommended and is favorable to the County.

Attachments:

- 1. Stipulated Final Judgment.
- 2. Budget Availability Statement.

Recommended by:  8/19/08
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>\$51,927</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>\$51,927</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 0699 Object 6120.
Program

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

Road Impact Fee Fund - Zone 3
Seminole Pratt/S of Okeechobee to N of Sycamore

Total of Settlement Inc Attorney's Fees	\$109,639.00
Clerk of the Court's Fees	\$ 170.00
total	<u>\$109,809.00</u>
Less Previous Deposits - Court Registry	<\$ 57,882.00>
Fiscal Impact	<u>\$ 51,927.00</u>

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments: \$25,000 has been added to the \$84,639 to cover any additional costs associated with the acquisition. This sum of \$109,639 is the Total of Settlement Including Attorney's fees listed above.

Atwillhitz 8.4.08
OFMB *vo 08/01*

J. J. Jacobson 8/4/08
Contract Dev. and Control

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.

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

CASE NO: 502007CA001113XXXXMBAE

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

Petitioner,

v.

PARCEL 192/292/392

DIEGO A. PENA, 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. Respondent, WINSOME BENJAMIN, shall have and recover from Petitioner, PALM BEACH COUNTY, the sum of \$78,000.00 in full payment for the taking of Parcels 192/292/392, including damages arising therefrom, if any. Respondent shall recover the sum of \$6,638.94 for attorney's fees.

2. The Petitioner, having previously deposited the sum of \$57,882.00 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 \$26,756.94 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. The vesting of title to Petitioner as to Parcels 192/292/392 is hereby approved, ratified and confirmed.

4. In the event a variance from setback requirements for future improvements on the subject property should be required because of this taking, Petitioner, PALM BEACH COUNTY, agrees to cooperate and not oppose such a variance.

5. The Court reserves jurisdiction to tax reasonable costs against Petitioner.

DONE AND ORDERED at Palm Beach County, Florida, this _____ day of June, 2008.

CIRCUIT COURT


Copies furnished to below listed counsel.

JOINT MOTION

Petitioner, PALM BEACH COUNTY and Respondent, WINSOME BENJAMIN, 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 20 day of June, 2008.

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

By 
PHILIP MUGAERO
FLORIDA BAR NO: 831178

JONES FOSTER JOHNSTON
& STUBBS, P.A.
Attorney for Respondent
605 South Flagler Drive
Suite 1100
West Palm Beach, FL 33402
(561) 859-3000

By 
H. ADAMS WEAVER
FLORIDA BAR NO: 125210

**INTEROFFICE COMMUNICATION
PALM BEACH COUNTY
BUDGET AVAILABILITY STATEMENT**

DATE: July 30, 2008

TO: Phil Mugavero, Assistant County Attorney
County Attorney's Office

FROM: Richard Farquhar, Director *mf*
Administrative Services

RE: Seminole Pratt/S of Okeechobee to N of Sycamore
Project # 1997511B
PBC vs Diego Pena, et al
Case No. 502007CA001113XXXXMB
Eminent Domain Settlement
Parcels 192, 292 & 392 \$109,639.00

BOARD MEETING DATE: August 19, 2008

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ 00417b

FUNDING STATUS: FULLY FUNDED

Is Item Included in Current Budget? Yes X No

Budget Account No:

Fund 3503 Dept 361 Unit 0699 Object 6120

Recommended Sources of Funds/Summary of Fiscal Impact:

Road Impact Fee Fund - Zone 3

Seminole Pratt/S of Okeechobee to N of Sycamore

Total of Settlement Inc Attorney's Fees	\$109,639.00
Clerk of the Court's Fees	<u>\$ 170.00</u>
Total	\$109,809.00
Less Previous Deposits - Court Registry	<u><\$ 57,882.00></u>
Fiscal Impact	\$ 51,927.00

This BAS is valid for up to ninety days from its date of issuance.
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