

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

Meeting Date: August 19, 2008

Consent
 Regular

Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: a) adopt a Resolution declaring that significant legal rights will be impaired if Palm Beach County is required to complete intergovernmental conflict resolution procedures with Town of Highland Beach prior to court proceedings, and b) direct staff to initiate litigation, as appropriate to resolve the County's conflict with the Town of Highland Beach over the County's pending special exception permit application for a park, and c) direct staff to initiate intergovernmental conflict resolution procedures during the pendency of litigation.

Summary: This action will declare that significant legal rights will be impaired if Palm Beach County is required to complete intergovernmental conflict resolution procedures with the Town of Highland Beach prior to court proceedings, will authorize litigation, and will authorize the commencement of intergovernmental conflict resolution procedures during the pendency of litigation. District 4 (ATP)

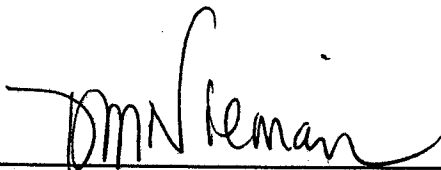
Background and Policy Issues: On March 4, 1987, Parks Director Dennis Eshleman informed the Board of the need for the proposed Cam D. Milani Park, to provide beach access for residents of Palm Beach County. On March 31, 1987, the County entered into a purchase and sale agreement providing for the purchase of the property slated for use as the park. On May 30, 2000, Palm Beach County filed a letter application to the Town of Highland Beach for a Zoning Map Amendment to rezone two County-owned parcels, A and B, to Government Services District. The official Zoning Map amendment to rezone the two parcels was approved by the Town Commission on November 28, 2000. The County applied for a special exception application to the Town of Highland Beach on December 19, 2001.

(Continued on Page 3)

Attachments:

- 1. Resolution

Recommended by:



8/12/08

Department Director

Date

Approved by:

N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	*** See below	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___
 Reporting Category _____

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:
 Fiscal Impact Indeterminable at this Time.

[Handwritten signatures and dates]
 8-14-08 8/14/08 8/12 6/14/08
 OFMB Contract Development and Control

B. Legal Sufficiency:

[Handwritten signature]

 Assistant County Attorney

C. Other Department Review:

 Department Director

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

Litigation was initiated by the former owner of the property over the County's intended use of the property. At the Town of Highland Beach's request, the County agreed to an abatement of the Town's consideration of the special exception application. At the conclusion of litigation in fall of 2006, the County requested that the Town resume consideration of the application. The Town heard the County's request in February 2007 and the County re-activated the prior application through a time updated submittal on September 11, 2007. On March 4, 2008, the Town's Building Official confirmed that the County's application met the nineteen code requirements for issuance of the special exception application.

The application was referred to the Town's Planning Board, which heard the matter at three workshops on February 13, 2008, March 12, 2008, and April 9, 2008, and a public hearing conducted over three days on May 14, 2008, May 28, 2008, and June 4, 2008. At the completion of the public hearing, the Planning Board recommended approval of the special exception application to the Town Commission. The Planning Board also submitted 31 recommended conditions of approval. Some of the conditions of approval are clearly unacceptable; for example, one of the conditions of approval would require the County to provide indemnification to individuals, like the Town Attorney, which the County cannot do under Section 768.28, Florida Statutes.

Perhaps more importantly, the Town Planning Board recommended conditions of approval expressly designed to restrict usage of the beach, by disallowing lifeguards and associated lifeguard amenities and by limiting use of the beach to snorkeling and fishing, even though the Town's own Comprehensive Plan provides for use of the subject parcel as a park and the Town's jurisdictional limits do not extend to activities occurring in the water. Public beach access was an important public policy underlying the acquisition of the subject parcel and the Planning Board's proposed conditions attempt to thwart the County's legitimate government interest in providing public access to the unique natural resources and archaeological features provided at this location.

The Town Commission met at a workshop hearing on July 29, 2008, to discuss the format and scheduling of a public hearing on the County's application. The County objected to the Town Manager's proposal that workshops be held in advance of the public hearing on the application, because such a process would violate the County's rights to a quasi-judicial hearing conducted with appropriate procedural due process protections. In response to the County's objection, the Town Commission requested a legal opinion from the Town's attorney. The Town's attorney requested that the County provide a legal memorandum on the objection, which the County provided on July 31, 2008, as requested. However, at the Town Commission meeting on August 5, 2008, the Town's attorney admitted that he had not reviewed the County's legal memorandum and stated that he was not prepared to offer an opinion on the County's objection to the use of workshops in advance of the code-required public hearing. The Town's attorney did not state when he would be able to offer an opinion.

As a result of the Town attorney's statements, the Town Commission tabled indefinitely its consideration of the County's special exception application. County staff has attempted to contact both the Town Manager and the Town's Attorney to receive information as to when the special exception application might be considered, but has failed to receive an answer from either individual.

Staff requests that the Board pass a resolution initiating inter-governmental dispute resolution procedures, pursuant to Chapter 164, Florida Statutes, to find that significant legal rights will be compromised if the County does not initiate litigation prior to the completion of the inter-governmental dispute resolution procedures, and to direct staff to both initiate litigation and commence the inter-governmental dispute resolution procedures, as needed, to timely resolve this dispute.

RESOLUTION NO. R-2008-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DECLARING ITS INTENT TO INITIATE INTERGOVERNMENTAL CONFLICT RESOLUTION PROCEDURES WITH THE TOWN OF HIGHLAND BEACH TO RESOLVE THE TOWN OF HIGHLAND BEACH'S REFUSAL TO CONSIDER PALM BEACH COUNTY'S APPLICATION FOR A SPECIAL EXCEPTION PERMIT TO CONSTRUCT PALM BEACH COUNTY CAM D. MILANI PARK, AND TO RESOLVE THE PROPOSED SPECIAL EXCEPTIONS RELATING TO THE PROPOSED PARK.

WHEREAS, Palm Beach County submitted a special exception application to the Town of Highland Beach on December 19, 2001, to obtain a special exception approval for the location of a proposed County park – Palm Beach County Cam D. Milani Park; and

WHEREAS, Palm Beach County acquiesced to the Town's request that processing of the special exception application be abated during litigation between the County and the subject property's former owner; and

WHEREAS, at the conclusion of the litigation, Palm Beach County requested that the Town consider moving forward with the special exception application. The Town, without notice, discussed the matter at its November 7, 2006 regularly scheduled meeting and requested that the County "hold off on proceeding with any matters dealing with the construction of the proposed Milani Park ... until all of the legal appeals have run their complete course." The County responded with a request to actively discuss the matter with the Town; and

WHEREAS, the County was scheduled for a February 27, 2007 Town Council workshop at which time the County requested that the Town resume consideration of the special exception application; and

WHEREAS, Palm Beach County re-activated its application on September 11, 2007, after litigation with the former owner was resolved and an updated application package could be prepared; and

WHEREAS, the Town of Highland Beach Building Official issued a May 28, 2008, memo, concluding that the special exception application meets the nineteen (19) standards identified in the Town of Highland Beach Land Development Code Chapter 30-67, Table 30-4, Permitted Uses, Additional Standards, Item (9); and

WHEREAS, the Town of Highland Beach's Planning Board considered the special exception at three workshop meetings on February 13, 2008, March 12, 2008, and April 9, 2008, and a public hearing conducted over three days on May 14, 2008, May 28, 2008, and June 4, 2008; and

WHEREAS, the Town of Highland Beach's Planning Board recommended to the Town of Highland Beach's Town Council that the application be approved and recommended conditions of approval; and

WHEREAS, several of the proposed conditions are unconstitutionally vague, would violate the County's obligations under Section 768.28, Florida Statutes, and are arbitrary and capricious and unrelated to the Code requirements for a special exception; and

WHEREAS, the Town of Highland Beach's Town Council held a workshop meeting on July 29, 2008, to discuss the scheduling of workshop meetings and public hearings for the County's application; and

WHEREAS, the Town of Highland Beach's Town Council refused to schedule the public hearing, after the County raised due process concerns about the consideration of the application at workshop meetings outside the quasi-judicial hearing process; and

WHEREAS, on August 5, 2008, the Town Council voted to table consideration of the special exception permit application indefinitely; and

WHEREAS, the County has attempted to contact both the Town of Highland Beach Town Manager and Town Attorney to determine when the special exception application will be scheduled for hearing by the Town Council, but has not received a response from either individual; and

WHEREAS, in spite of repeated requests that the Town of Highland Beach's Town Council take action on the pending permit application, the Town Council has refused to take action on the application; and

WHEREAS, the Town of Highland Beach's application procedures, on their face and as-applied, are constitutionally insufficient, unconstitutionally vague, and constitute an unlawful delegation of authority; and

WHEREAS, the Town of Highland Beach's refusal to take action on the County's special exception application denies the taxpayers of Palm Beach County access to publicly owned

lands and the natural resources of the County, wastes money and resources of the County, and impairs the County's rights as a sovereign entity and as a land-owner; and

WHEREAS, Section 164.1052, Florida Statutes (2008), requires the passage of a resolution, declaring the local government's intent to initiate government conflict resolution procedures.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The recitals above are true and correct and form a part of this Resolution.
2. It is the intent of the Board of County Commissioners of Palm Beach County to initiate intergovernmental conflict resolution procedures, pursuant to Chapter 164, Florida Statutes (2004), to resolve the conflict over the Town of Highland Beach's refusal to take action on the County's pending application.
3. Pursuant to Section 164.1052(1), Florida Statutes (2004), the County will send to the Town of Highland Beach, within five days of the passage of this Resolution, a certified copy of the Resolution and a letter stating the nature of the conflict, the reason for initiating the conflict resolution process, the proposed date and location for the conflict assessment meeting, and suggestions regarding the officials who should be present at the conflict assessment meeting.
4. This Board finds that "significant legal rights will be compromised if a court proceeding does not take place before the provisions of this act are complied with."

The foregoing Resolution was offered by Commissioner _____,
who moved its adoption. The motion was seconded by Commissioner _____,
and upon being put to a vote, the vote was as follows:

Commissioner Addie L. Greene, Chairperson
Commissioner Jeff Koons
Commissioner Karen Marcus
Commissioner Robert J. Kanjian
Commissioner Mary McCarty
Commissioner Burt Aaronson
Commissioner Jess R. Santamaria

The Chairperson thereupon declared the Resolution duly passed and adopted this
_____ day of _____, 2008.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney