

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 9/9/08 [X] Consent [] Regular
[] Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends Motion to approve: Settlement in the total amount of \$342,547, inclusive of attorneys fees and costs, in the case of Palm Beach County v. Douglas Sykes, et.al., Case No. 502007CA014837XXXMB.

Summary: This is an action to quiet title to land measuring 4.33 acres that lies adjacent to PBC Water Treatment Plant (WTP) #8. Although the County claims an ownership interest in the land, the parcel has been on the tax roll as privately owned since 1955, thereby clouding the County's title. Countywide (PGE)

Background and Justification: The County, claiming title to the land based in part on a 1948 Final Judgment in its favor, filed this quiet title action against numerous parties, including the tax roll owners. The Defendants filed a counterclaim asserting a superior title to the land under the Marketable Record Title to Real Property Act (MRTA), a statute designed to eliminate certain title defects in favor of an owner of record for a period of thirty (30) years under particular circumstances.

The land in question was originally owned by the Palm Beach Farms Company and was platted in 1914. The County acquired title to approximately 2/3 of the parcel by virtue of a 1948 Final Judgment. An ownership interest in the remaining 1/3 of the parcel was not acquired by the County until 2002, when it was quitclaimed by the Palm Beach Farms Company's successors-in-interest as part of a settlement in an unrelated lawsuit.

(Continued on Page 3)

Attachments:

- 1. Mediation Settlement Agreement
- 2. Budget Availability Statement

Recommended by: Tom Neman 7/17/08
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	\$342,547	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	\$342,547	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____

Budget Account No.: Fund 4011 Department 721 Unit W006 Object 6502

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:

Atwillhitt 7-22-08 OFMB *on 7/21/08*
Dr. J. Jacob 7/23/08 Contract Development and Control
7-22-08 *7/22/08* *7/21/08*

B. Legal Sufficiency:

Genevieve Erdell
 Assistant County Attorney

C. Other Department Review:

Department Director

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

Notwithstanding the 1948 Final Judgment in favor of the County, in 1955, Mr. and Mrs. George Fuller filed in the public records a notice of ownership interest (based on principles of adverse possession). The Fullers claimed ownership to 26 acres, including the parcel in question. As a result of the public notice, the Fullers began paying taxes and were placed on the tax roll as the lawful owners. In 1965, following the deaths of Mr. and Mrs. Fuller, the land was sold to Harvey Sykes, Sr., the father of the main Defendants in this quiet title action. Mr. Sykes and his children, following his death, were placed on the tax roll and continued to pay the taxes. In 2005, the County requested a title search as part of a potential eminent domain action to expand WTP #8. The title search revealed the 1948 Final Judgment and possible County ownership to at least part of the parcel.

Although it appears the County could likely defeat the Defendants' claim based on MRTA, as well as a claim they could assert based on adverse possession concerning the portion of the land conveyed to the County in the 1948 Final Judgment, the same result is not true for the remaining land. The County's exposure for loss is significant with respect to that portion of the land conveyed to the County in the 2002 quitclaim deeds. In that regard, it appears the Palm Beach Farms Company, and therefore its successors, as a private non-government entity, lost whatever ownership interest it had in the land many years ago when it failed to challenge the Fullers' 1955 public notice of ownership based on adverse possession and their subsequent payment of the taxes. Since the 2002 quitclaim deeds failed to convey title to the County, a separate eminent domain action would be necessary to secure the land for the ultimate expansion of WTP #8, at great expense, as the County would be solely liable in that action for all the costs of litigation, including expert witness fees and attorney fees, in addition to paying the fair market value of the land.

Currently, the appraised value of the land falls between \$310,000 and \$480,000. In light of the County's exposure on the counterclaim, the costs still to be incurred to defend this action should it be tried, and the future costs to be incurred in a separate eminent domain action, it is the opinion of Staff and the Director of the Water Utilities Department, that a settlement in the amount of \$342,547 is in the County's best interest. The settlement amount is based on the lowest appraised value of \$310,000, plus an additional \$32,547 for the repayment of the taxes paid since 1999, for a total settlement in the amount of \$342,547.

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

CASE NO. 502007CA014837XXXXMBAJ

PALM BEACH COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF FLORIDA

vs.

DOUGLAS M. SYKES, INDIVIDUALLY, DOUGLAS M. SYKES AND
HARVEY M. SYKES, JR., AS CO-TRUSTEES OF THE TESTAMENTARY
TRUSTS UNDER THE LAST WILL AND TESTAMENT OF
HARVEY EUGENE SYKES, SR.; DOUGLAS J. SYKES, DONALD M. SYKES


MEDIATION SETTLEMENT AGREEMENT

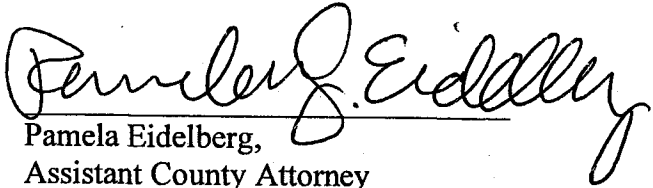
COMES NOW, the undersigned parties hereby state that they attended mediation in the matter before Mediator Al LaSorte on June 16, 2008, and reached a mediated settlement. The terms of the settlement are as follows:

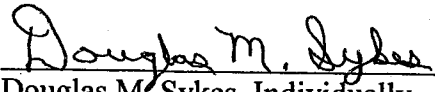
1. Palm Beach County shall pay the sum of \$342,547.00 to PERRY & KERN, P.A. TRUST ACCOUNT within 30 days of administrative approval hereof by the Palm Beach County Commission.
2. Each party shall bear their own attorneys fees and costs.
3. This settlement is contingent upon approval by the Palm Beach County Commission. If the mediation settlement agreement is not approved by the Palm Beach County Commission, then the parties agree that the action shall be re-noticed for trial before the court herein.
4. Upon approval by the Palm Beach County Commission and payment of the settlement sum aforementioned, the parties agree to the entry of a final judgment quieting title to the real property which is the subject matter of this action in the name of Palm Beach County to the exclusion of all defendants named herein, and all parties claiming by through under or against the same.
5. The parties agree that this settlement agreement may be signed in counterpart and via facsimile.

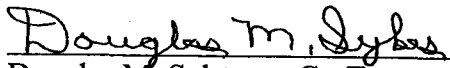
Page 2
Mediation Settlement Agreement

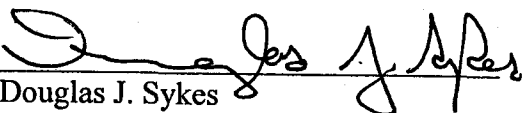
6. The parties agree to execute such additional documents as are reasonably necessary to effectuate this settlement.

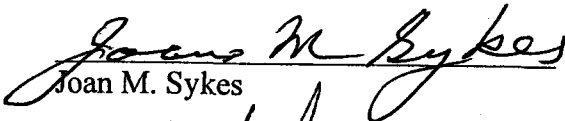

Bevin A. Beaudet, Director of
Palm Beach County Water Utilities

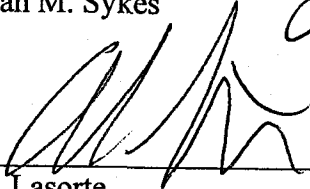

Pamela Eidelberg,
Assistant County Attorney

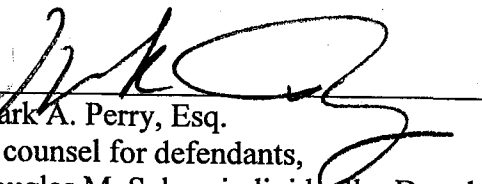

Douglas M. Sykes, Individually


Douglas M. Sykes, as Co-Trustee of
the Testamentary Trusts under the
Last Will and Testament of Harvey
Eugene Sykes, Sr.

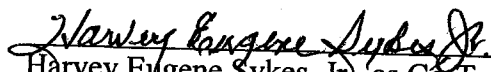

Douglas J. Sykes


Joan M. Sykes


Al Lasorte
as Mediator


Mark A. Perry, Esq.
as counsel for defendants,
Douglas M. Sykes, individually, Douglas M. Sykes and Harvey Eugene Sykes, Jr.,
as Co-Trustees of the Testamentary Trusts under the Last Will and Testament of Harvey
Eugene Sykes Sr.; Douglas. J. Sykes, and Donald M. Sykes

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Mediation Settlement Agreement


Harvey Eugene Sykes, Jr., as Co-Trustee of the
Testamentary Trusts under the Last Will and
Testament of Harvey Eugene

**INTEROFFICE COMMUNICATION
PALM BEACH COUNTY**

BUDGET AVAILABILITY STATEMENT

DATE: July 22, 2008

TO: Jerry Kolb, Budget Analyst
Office of Financial Management & Budget

FROM: Guy Eggertsson, Fiscal Manager
Water Utilities Department

Guy Eggertsson

RE: Sykes Property Purchase

FISCAL IMPACT ANALYSIS:

Summary of Fiscal Impact:

Amount: \$342,547.00

Budget Account Number:

Fund	Agency	Organization	Object	Allocation
4011	721	W006	6502	100%

Recommended Sources of Funds/Summary of Fiscal Impact:

Water Utility User Fees