

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 16, 2008

Consent [] Regular
 Workshop [] Public Hearing

Department: County Attorney

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to authorize a settlement as to Parcels 102, 704, 705, 705A, and 705B in the amount of \$5,554,860 inclusive of attorney's fees, in the eminent domain proceeding entitled Palm Beach County v. E.F. Johns, Ltd., et al, Case No.: 50 2007 CA 00-2957 XXXMB AD, for the improvement of Lyons Road.

Summary: This action would authorize a settlement of compensation for the acquisition of one parcel in fee simple and four temporary construction easements acquired for the improvement of Lyons Road from Glades Road to Yamato Road (Project No. 1998504), by paying \$5,554,860 for the property acquired, damages, and attorney's fees. District: 5 (PM).

Background and Justification: Pursuant to the entry of an Order of Taking, Palm Beach County acquired in fee simple Parcel 102, consisting of 7.43 acres on which a retention pond related to the widening of Lyons road from Glades Road to Yamato Road is to be constructed. The County also acquired four temporary construction easements on property identified as Parcel 704, 705, 705A, and 705B. However, the disparity between the appraisals obtained by the County and the owner's appraisal related to the compensation for the acquisition of Parcel 102.

The property acquired is part of large tract straddling Lyons road currently in use for farming. The County hired one appraiser, initially, and a second, after receiving the owner's significantly higher appraisal, in order to get a second opinion. The first appraiser hired by the County opined, in an updated appraisal, that full compensation for Parcel 102 is in the amount of \$3,457,000 with no damages to the remaining property ("severance damages") plus \$24,300 for the temporary construction easements. The second appraiser opined that full compensation for the taking of Parcel 102 is in the amount of \$3,097,200 for the acquisition of the land plus \$472,600 in severance damages, for a total of \$3,569,800 for Parcel 102 plus compensation for the easements. The owner's appraiser opined that compensation was in the amount of \$6,968,700 for the land, plus severance damages of \$4,741,550, for a total of \$11,710,250 for Parcel 102 (plus compensation for the easements, which were not appraised). The owner's severance damages were based largely on an alleged limitation on the ability to develop the remaining property.

The settlement is in the amount of \$5,000,000 for the taking of Parcel 102 including severance damages, if any, plus \$24,300 for the temporary construction easements. Additionally, the settlement calls for Palm Beach County to enter into an agreement (the form of which has already been reviewed and approved and is attached to the proposed final judgment) for the relocation and incorporation of the detention pond into the drainage system of the remaining property if and when it is developed. The settlement results in monetary benefit attorneys' fees of \$491,860, based on the difference between the settlement amount for the property and easements, \$5,024,300, and the original offer of \$2,915,100. The settlement also calls for a non-monetary benefit fee of \$38,700 based on the elimination of severance damages through the pond relocation agreement. Accordingly, the total amount of attorney's fees under the agreement is \$530,560 and the total settlement amount is \$5,554,860. This settles all matters except payment of the owner's expert fees and costs.

If the owner were fully successful at trial the County would have to pay \$11,710,250 plus attorney's fees of \$1,829,050 for a total of \$13,539,300 plus expert fees and costs that would be greater than under this settlement. Accordingly, this settlement is cost-effective in light of the savings in expert fees and costs which would be incurred if this matter were tried and the potential for a significantly higher jury verdict.

Attachments:

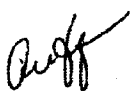
1. Budget Availability Statement
2. Mediated Settlement Agreement
3. Proposed Stipulated Final Judgment (with proposed Agreement Regarding Retention Pond) and Joint Motion for Entry executed by owner's counsel

Recommended by: _____ Department Director _____ Date 11/24/08

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

DATE: October 28, 2008

TO: Barry S. Balmuth
Outside Attorney

FROM: Richard Farquhar, Director 
Administrative Services

RE: Lyons Rd/Glades Rd to Yamato Rd
Project # 1998504
PBC v E.F. Johns, Ltd. Et al.
Case # 50 2007 CA 002957XXXXMB (AD)
Full Compensation, Severance Damages & Attorney's Fees
Parcels: 102, 704, 705, 705A and 705B \$5,024,300

BOARD MEETING DATE: N/A

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ N/A

FUNDING STATUS: FULLY FUNDED

Is Item Included in Current Budget? Yes X No

Budget Account No:

Fund 3505 Dept 361 Unit 0667 Object 6120

Recommended Sources of Funds/Summary of Fiscal Impact:

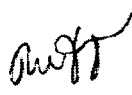
Road Impact Fee Fund - Zone 5

Lyons Rd/Glades Rd to Yamato Rd

Full Compensation & Severance Damages	\$5,024,300
Attorney's Fees	\$ 530,560
Previous Deposits	<\$3,481,300>
Fiscal Impact	\$2,073,560



**Inter-Office Memo
Palm Beach County
Engineering Department**

DATE: October 28, 2008
TO: Joe Doucette, Budget Director
OFMB
FROM: Richard Farquhar, Director 
Engineering & Public Works/Administrative Services
RE: Non-Board Budget Transfer(s) FY 2009 – BGEX 102808-373

Please process the above referenced transfer document(s).

Road Impact Fee Fund – Zone 5

Lyons Rd/Glades Rd to Yamato Rd

3505-361-0667-6120	\$2,021,560
3505-361-9900-9912	<\$2,021,560>
	<u>-0-</u>

Transfer approved Road Program funding for ROW to project. Adjust claims FY 2008.

Authorized Amount	\$6,300,000
Previously Funded	<\$ 0>
This Transfer	<\$2,021,560>
Balance	\$4,278,440

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

PALM BEACH COUNTY,

Petitioner,

v.

E.F. JOHNS, LTD., *et. al.*,

Defendant.

_____ /

Case No. 502007 CA 00-2957XXXXMB AD

MEDIATED SETTLEMENT AGREEMENT

Palm Beach County ("COUNTY") and E.F. JOHNS, LTD. ("JOHNS") agree as follows:

1. This agreement is subject to the approval of the Palm Beach County Board of County Commissioners.
2. If approved by the Palm Beach County Board of County Commissioners, the parties shall stipulate to the entry of a Final Judgment by which, subject to apportionment, if any, to lessees, mortgagees and any other interest holders, JOHNS shall have and recover from COUNTY the sum of \$5,024,300 as full compensation inclusive of improvements, land, severance damages, business damages, and any and all other damages and compensation for claims that were brought or could have been brought for and relating to the taking of Parcels 102, 704, 705, 705A, and 705B, plus full and complete monetary benefit and non-monetary benefit attorney's fee and costs of \$530,560.00.
3. The sum referenced in the preceding paragraph is inclusive of all sums deposited

for Parcels 102, 704, 705, 705A, and 705B under the Order of Taking. COUNTY shall only be required to deposit in the registry of the court the difference between the sums in the preceding paragraph and the amounts previously deposited. Notwithstanding this provision, payments for attorneys' fees shall be made directly to counsel for JOHNS. There shall be no further compensation to JOHNS other than expert fees and costs and attorney's fees for prosecuting expert fee claims, if any.

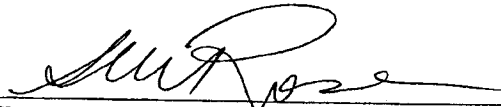
4. This settlement is subject to a mutually-acceptable pond relocation agreement which will entitle JOHNS to relocate the drainage pond to another part or parts of JOHNS' property (or combine it with a larger pond), provided that (i) equal or greater drainage protection for the roadway is provided; (ii) roadway drainage is not disrupted, (iii) adequate drainage easements are granted to COUNTY and (iv) that all permitting and expenses involved in the relocation are born by JOHNS. Any portion of Parcel 102 which is no longer used as a retention and will be reconveyed to JOHNS.

5. This settlement is based on the construction plans as they currently exist, including provisions and calculations for drainage. If the project is built in any way which materially differs from these plans and said change negatively affects the remaining property, JOHNS shall have the right to seek additional compensation.

6. All provisions hereof, except Paragraph 1 shall be part of the Stipulated Final Judgment.

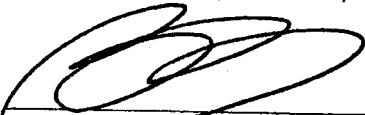
Dated this 3rd day of September, 2008.

PALM BEACH COUNTY



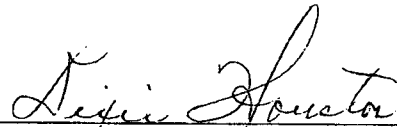
By: L. Morton Rose, PE
Five-Year Roadway Program Manager

Barry S. Balmuth, P.A.
Attorney for Palm Beach County
Centurion Tower, 11th Floor
1601 Forum Place, Suite 1101
West Palm Beach, Florida 33401
(561) 242-9400 (Telephone)
(561) 478-2433 (Facsimile)




BARRY S. BALMUTH
Florida Bar No.:

E.F. JOHNS, LTD.




Dixie Houston, as Manager of Johns Family
Holdings, LLC, as General Partner of E.F.
Johns, Ltd.



Daniel Johns, as Manager of Johns Family
Holdings, LLC, as General Partner of E.F.
Johns, Ltd.

Forman Hanratty Montgomery
Attorneys for JOHNS
723 East Fort King Street
Ocala, Florida 344712233
(352)732-3915 (Telephone)
(352) 35101690 (Facsimile)



CHARLES R. FORMAN
Florida Bar No: 229253
JOSEPH M. HANRATTY
Florida Bar No.: 949760

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

Petitioner

v.

E.F. JOHNS, LTD, et al.,

Defendants.

IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO: 50 2007 CA00-2957 (AD)

PARCELS: 102, 704, 705, 705A, 705B

STIPULATED FINAL JUDGMENT
AND ORDER AWARDING ATTORNEY'S FEES

THIS CAUSE having come on for consideration upon the Joint Motion for Entry of Final Judgment and Order Awarding Attorney's Fees made by the Petitioner, PALMBEACH COUNTY, and the Defendant, E.F. JOHNS, LTD., a Florida Limited Partnership, and it appearing that the parties are authorized to enter into such Motion, and the Court finding that the compensation to be paid by the Petitioner is full, just and reasonable for all parties concerned, and the Court being fully advised in the premises, it is now, therefore,

ORDERED AND ADJUDGED that the Court has jurisdiction of this action, of the subject property, and of the parties in this cause pursuant to Chapters 73 and 74 of the Florida Statutes; that the pleadings in this cause are sufficient; that the Petitioner is properly exercising its delegated authority in that the condemnation of Parcels 102, 704, 705, 705A and 705B are for a valid purpose, and are necessary for such purpose. It is further

ORDERED AND ADJUDGED that the Motion for Entry of this Stipulated Final

Judgment is approved and incorporated by reference in this Order. It is further

ORDERED AND ADJUDGED that, Defendant, E.F. JOHNS, LTD., does have and recover of and from the Petitioner, PALM BEACH COUNTY, the sum of FIVE MILLION TWENTY-FOUR THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$5,024,300.00), in full payment for the property and easements taken designated as Parcels 102, 704, 705, 705A and 705B, any improvements, landscaping, and crops in the area of taking, relocation costs, and for all damages of any nature including, but not limited to, damages to the remaining property and business damages, if any, and for all claims that were raised or could have been raised. Petitioner, PALM BEACH COUNTY, has previously deposited the sum of THREE MILLION FOUR HUNDRED EIGHTY-ONE THOUSAND THREE HUNDRED AND NO/100TH DOLLARS (\$3,481,300.00) into the Registry of the Court pursuant to the Order of Taking of Parcels 102, 704, 705, 705A, 705B dated May 25, 2007 which the Defendant has withdrawn pursuant to an Order Allowing Withdrawal of Funds dated May 31, 2007 and, therefore, the additional amount, over and above that already deposited and withdrawn, to be recovered by Defendant from Petitioner for the items of compensation referenced in the preceding sentence is ONE MILLION FIVE HUNDRED FORTY-THREE THOUSAND AND NO/100THS DOLLARS (\$1,543,000.00). It is further

ORDER AND ADJUDGED that Defendant, E.F. JOHNS, LTD., shall further have and recover, with the exception of reasonable attorney's fees for the prosecution of claims for experts' fees and costs, full and complete attorney's fees of FIVE HUNDRED THIRTY THOUSAND FIVE HUNDRED SIXTY AND NO/100 DOLLARS (\$530,560.00). It is

further

ORDER AND ADJUDGED that, within thirty (30) days of its receipt of a certified copy of this final judgment, PALM BEACH COUNTY shall make a check in the amount of **TWO MILLION SEVENTY-THREE THOUSAND FIVE HUNDRED SIXTY AND NO/100THS DOLLARS (\$2,073,560.00)**, representing the additional compensation and attorneys fees referenced above, payable to the FORMAN, HANRATTY & MONTGOMERY TRUST ACCOUNT, and mail same to Charles Forman, Esquire, Forman, Hanratty & Montgomery, 723 East Fort King Street, Ocala, Florida, 34471, as attorney for the Defendant, E.F. JOHNS, LTD., for proper distribution without further order of this Court.

It is further

ORDERED AND ADJUDGED that, if the Lyons Road from Glades Road to Yamato Road project in the area of E.F. JOHNS, LTD.'S remaining property is not built in a manner which materially conforms with the current construction plans and, as a result, Defendant's remaining property is damaged to a materially greater extent than the damages resulting from the taking of Parcels 102, 704, 705, 705A, and 705B and the construction of the project as contemplated by those construction plans, Defendant shall have the right to seek any damages over and above the damages that would have been caused by the taking of Parcel 102, 704, 705, 705A, and 705B and the construction of the project as contemplated by the current construction plans. It is further

ORDERED AND ADJUDGED that title to the property designated as Parcels 102, 704, 705, 705A and 705B, which vested in the Petitioner pursuant to that Order of Taking

recorded in the public records of Palm Beach County at Official Records Book 21795, Page 1135 and deposit of money heretofore made, is approved, ratified and confirmed. It is further

ORDERED AND ADJUDGED that the parties shall enter into the Pond Relocation Agreement attached hereto and incorporated by reference as Exhibit "1". It is further and it is further

ORDERED AND ADJUDGED that there shall be no further compensation or attorney's fees in this cause, save for experts' fees and costs and attorney's costs in the defense of this cause through and including this Stipulated Final Judgment, and attorney's fees incurred in supplemental proceedings, if any, for the prosecution of experts' fees and costs and attorney's costs. It is

ORDER AND ADJUDGED that, the Court shall retain jurisdiction over this cause to: 1. enforce this judgment; 2. pursuant to Section 73.091 of the Florida Statutes, tax reasonable experts' fees and costs and attorney's costs incurred by Defendant in defense of this action through the entry of this judgment, upon timely Motion of either party; and 3. pursuant to Section 73.092 of the Florida Statutes, tax against Petitioner attorney's fees for supplemental proceedings, if any, related to the prosecution of claims for experts' fees and costs. It is further

ORDERED AND ADJUDGED that, as judicial labor has not ceased on this matter, the Clerk of the Court shall not at this time close this case file nor shall the Clerk of the Court require a fee for the filing of future pleadings.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County,
Florida, this ___ day of _____, 2008.

DAVID E. FRENCH
CIRCUIT JUDGE

Copies to: Barry S. Balmuth, Esq.
BARRY S. BALMUTH, P.A.
Centurion Tower, Eleventh Floor
1601 Forum Place, Suite 1101
West Palm Beach, FL 33401

Robert A. Schreiber, Esq.
Hicks & Schreiber, P.A.
890 South Dixie Highway
Coral Gables, FL 33146

Charles R. Forman, Esq.
Forman, Hanratty & Montgomery
1323 SE 3rd Avenue
Fort Lauderdale, FL 33316

Joseph M. Hanratty, Esq.
Forman, Hanratty & Montgomery
723 E. Ft. King Street
Ocala, FL 34471