

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 21, 2009

[X] Consent [] Regular
[] Ordinance [] Public
[] Workshop

Department:

By: COUNTY ATTORNEY'S OFFICE

For: ENGINEERING & PUBLIC WORKS

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve settlement in the total amount of \$128,592 inclusive of attorney's fees, but excluding costs, as to Parcels 108, 208 and 308 in the case of Palm Beach County v. Boca Lago Country Club, Inc., et al., Case No. 50 2008 CA029566XXXXMBAI. **Summary:** On February 4, 2009, Palm Beach County acquired these three (3) parcels of land through eminent domain for a right-of-way in fee simple, an embankment easement and a temporary construction easement, along Boca Rio Road, between Palmetto Park Road and Glades Road, in Boca Raton for the construction and improvement of Boca Rio Road. As the County has already taken the property, the issue in the case is the amount of full compensation due to the owner of the parcels. Countywide (DRO)

Background and Justification:

In this matter the County filed an action in eminent domain on nine (9) parcels of land for the construction and improvement of Boca Rio Road from Palmetto Park Road to Glades Road in Boca Raton, Florida.

On February 4, 2009, the County acquired three (3) of the parcels, thus taking legal ownership and the remaining issue regarding these parcels is the valuation of the parcels. The County's appraised value of the three (3) parcels is \$65,400. However, the property owner's appraised value of the parcels is \$314,500 based on claimed damages to the remainder of the property resulting from the County's acquisition. Taking into account the County's potential exposure, including all cost associated with trial, which are paid by the County in Eminent Domain cases, the Engineering & Public Works Department concurs that this proposed settlement is in the County's best interest and approval for settlement is hereby requested.

ATTACHMENTS:

1. Stipulated Final Judgment (1)

Recommended by: _____

County Attorney

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>\$82,992</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>\$82,992</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 3505 Dept. 361 Unit 0765 Object 6120
Program

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

Road Impact Fee Fund - Zone 5
Boca Rio Rd/Palmetto Pk Rd to Glades Rd

	Appraised Value
Parcel Nos. 108/208/308	\$108,000.00
Previously Deposited	<\$45,600.00>
Estimated Business Damages, Attorney's Fees	\$ 20,592.00
Fiscal Impact	\$ 82,992.00

C. Departmental Fiscal Review: A. Willhite
(SD)

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

* \$45,600 previously deposited; \$82,992 is remaining fiscal impact of settlement.
Costs are indeterminate at this time.
[Signature] 7/15/09 OFMB
[Signature] 7/15/09 Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

[Signature]
Assistant County Attorney

This item complies with current
County policies.

C. Other Department Review:

Department Director

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

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

CASE NO. 2008 CA-029566-AI
PARCEL NOS: 108/208/308

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

Petitioner,

vs.

BOCA LAGO COUNTRY CLUB, INC.,
A Corporation existing under the laws
of Florida, et al.

Respondents.

STIPULATED FINAL JUDGMENT AS TO PARCELS 108/208/308
OWNED BY WEST LAKES OF BOCA RATON, INC.

THIS CAUSE having come before the Court on the Joint Motion by Petitioner, Palm Beach County, by and through its undersigned Assistant County Attorney, and William P. Doney, Esquire, attorney for the Respondent, West Lakes of Boca Raton, Inc., (hereinafter "West Lakes"), and the Court being fully advised in the premises, hereby finds and decides as follows:

1. The Court has jurisdiction over the subject matter of, and the parties to this cause.
2. Respondent, West Lakes, shall have and recover the sum of ONE HUNDRED EIGHT THOUSAND DOLLARS AND 00/100 CENTS (\$128, 592.00), as full, just and final compensation to the Respondent for the taking of Parcels 108/208/308, inclusive of attorney's fees, but excluding costs. There are no taxes due on Parcels 108/208/308.

3. Petitioner, Palm Beach County, having previously deposited the sum of FORTY-FIVE THOUSAND SIX HUNDRED DOLLARS AND 00/100 (\$45,600.00) into the Registry of the Court pursuant to the Order of Taking entered on January 28, 2009, and the Respondent, West Lakes, having previously withdrawn this amount as payment toward the full compensation, the Petitioner is entitled to a credit in that amount towards the final compensation.

4. Respondent, West Lakes, shall recover attorney's fees based on monetary benefits in the amount of TWENTY THOUSAND FIVE HUNDRED NINETY-TWO DOLLARS AND 00/100 CENTS (\$20,592.00).

5. Petitioner, Palm Beach County, shall within thirty (30) days from the date of entry of this Stipulated Final Judgment, issue a check in the amount of EIGHTY-TWO THOUSAND NINE HUNDRED NINETY TWO DOLLARS AND 00/100 (\$82,992.00), made payable to VANCE, DONEY & MACGIBBON, P.A., TRUST ACCOUNT, and mail same to William P. Doney, Esq., Vance, Doney & MacGibbon, P.A., 1665 Palm Beach Lakes Blvd., Suite 610, West Palm Beach, Florida, 33401, representing the difference between the agreed upon compensation referenced in paragraph two (2) and the amount previously deposited into the Registry of the Court and received by the Respondent for Parcels 108/208/308, together with the payment of attorney's fees based upon monetary benefits.

6. Upon commencement and during the construction and improvement of Boca Rio Road adjacent to the subject parcels, the County or its agent(s), the road contractor, shall; provide a temporary fence and gate running along the west line of Parcel 208; and relocate the fire hydrant, if necessary, as required and approved by the Fire Marshall.

7. Prior to the commencement of construction of Boca Rio Road adjacent to the subject parcels of land, the County shall, at the County's expense, design and implement a drainage system (cure) to provide drainage to the northeast corner of West Lakes' property, consisting of a re-grading of the area at the northeast corner of the property abutting Boca Rio Road, to provide the necessary grades and slopes to maintain overland flow to the inlets proposed at the driveway entrance known as South Street, in order to maintain existing drainage patterns. Attached as **Exhibit "A"** are plans showing the area to be re-graded, and inlets to be installed.

8. In order to maintain a safe area for stepping off the patio abutting the proposed drainage cure area, the drainage cure shall provide for a slope of less than 2% for 30 inches from the existing patio and side slopes of the drainage swale no steeper than 4 horizontal to 1 vertical. In the event overland flow cannot be installed to comply with the above standard, then a storm drain will be constructed to convey the storm water runoff.

9. The parties agree that upon commencement and during construction and improvements of the subject road, West Lakes shall, at no expense to the County, provide a license for the County to enter upon West Lakes property to construct and implement the above referenced drainage cure, and upon construction and implementation of this cure, the implemented drainage cure shall be the sole responsibility of the Respondent, West Lakes, to maintain.

10. Title to Parcels 108/208/308, as further described in **Exhibit "B"** attached hereto, which vested in the Petitioner pursuant to the Order of Taking and deposits previously made, is hereby approved, ratified and confirmed.

11. The sums paid to the Respondent, West Lakes, represent full and final compensation for the taking of Parcels 108/208/308, and the Respondent will not seek any further compensation from the Petitioner in this cause, except as specifically set forth herein.

12. The Court reserves jurisdiction to award non-monetary benefit attorney's fees pursuant to Florida law, and award the Respondent expert witness fees, costs and attorney's fees pertaining to supplemental proceedings, if any.

DONE AND ORDERED in chambers this _____ day of July, 2009, in West Palm Beach, Palm Beach County, Florida.

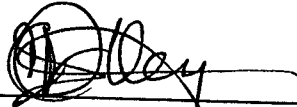
Honorable Edward A. Garrison
Circuit Judge

JOINT MOTION

Petitioner, Palm Beach County, and William P. Doney, Esquire, attorney for the Respondent, West Lakes, hereby stipulate that they have resolved this case as described above, and move this Court for entry of the foregoing Stipulated Final Judgment.

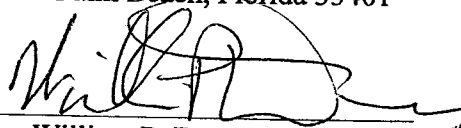
DATED this 1st day of July, 2009.

DAVID R. OTTEY, ESQ.
Assistant County Attorney
300 N. Dixie Hwy., Suite 359
West Palm Beach, FL 33401



By: David Ottey
Fla. Bar No. 015590

WILLIAM P. DONEY, ESQ.
Vance, Doney & MacGibbon, P.A.
1665 Palm Beach Lakes Blvd., Suite 610
West Palm Beach, Florida 33401



By: William P. Doney
Fla. Bar No. 237086

Copies furnished to the parties listed above

PALM BEACH COUNTY v. BOCA LAGO COUNTRY CLUB, INC., et al.
CASE NO. 50 2008CA029566XXXXMBAI
PROJECT NO. 2001501
Boca Rio Road, Palmetto Park Road to Glades Road
SERVICE LIST

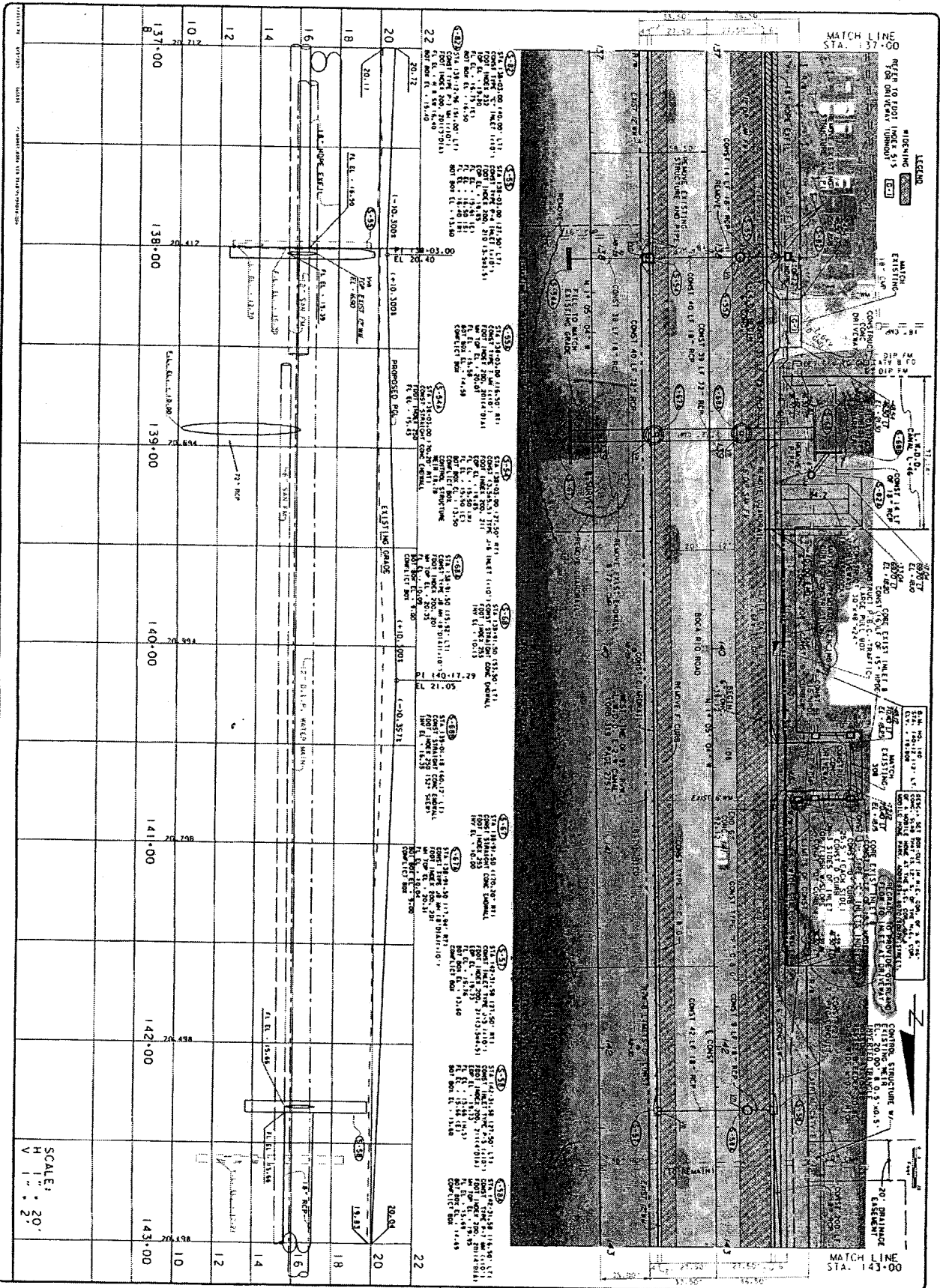
PARCELS 108/208/308

Owned By: West Lakes of Boca Raton, Inc.,
A Corporation existing under the laws of Florida
8279 E. Club Road
Boca Raton, FL 33433-1509

Serve: William P. Doney, Esquire
Vance, Doney & MacGibbon, P.A.
1665 Palm Beach Lakes Blvd.
Suite 610
West Palm Beach, FL 33401

AS TO ALL PARCELS

Palm Beach County Tax Collector's Office
301 North Olive Avenue
3rd Floor
West Palm Beach, FL 33401



Project: BOCA RIO ROAD
PALMETTO PARK ROAD TO
GLADES ROAD (S.R. 808)

Scale: 1" = 20'

Sheet: 19 of 49

Date: 10/1/04

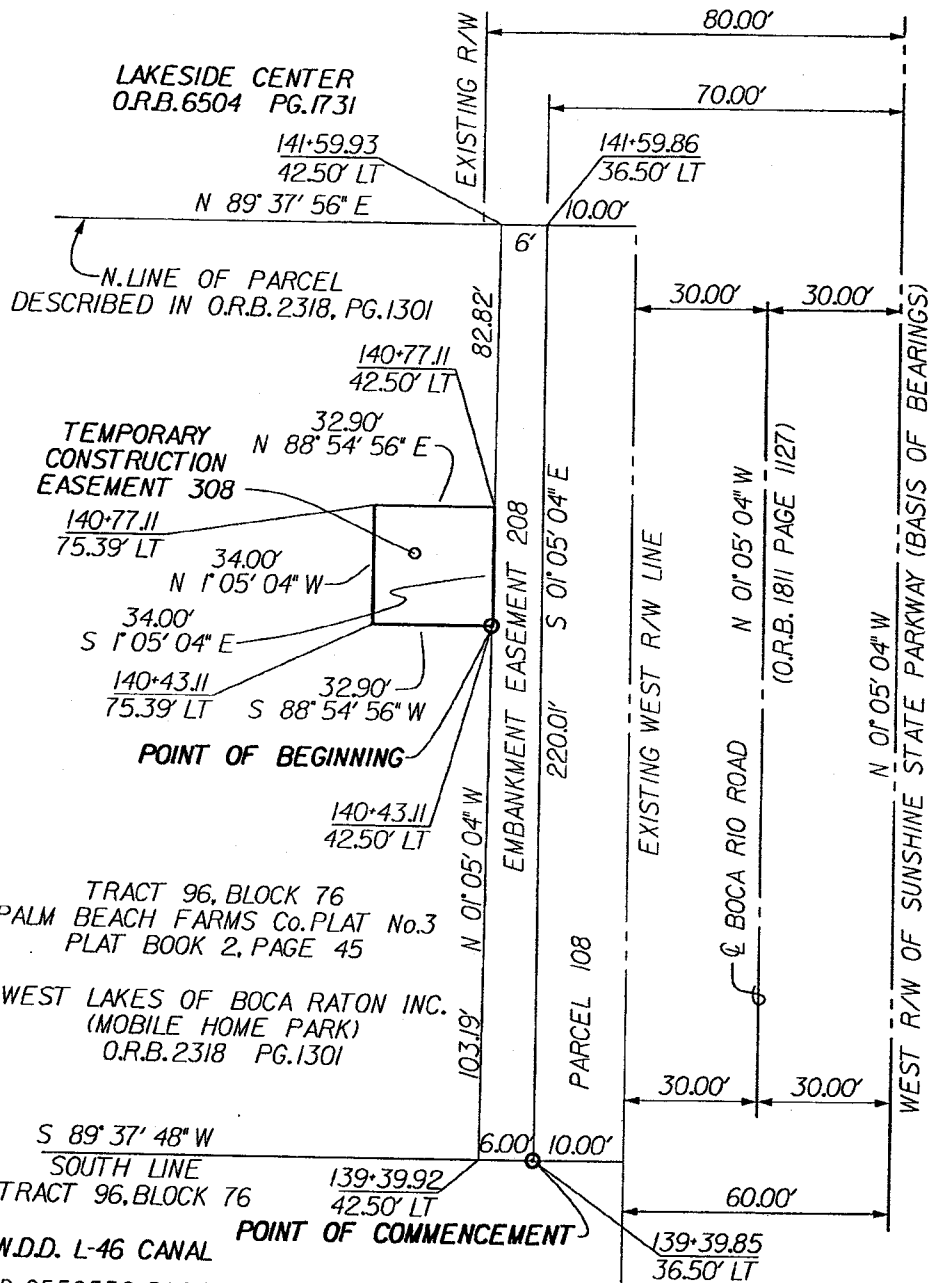
Legend:

- EXISTING STRUCTURE
- EXISTING ROAD
- EXISTING SIDEWALK
- EXISTING CURB
- EXISTING DRAINAGE
- EXISTING UTILITIES
- EXISTING FENCE
- EXISTING SIGN
- EXISTING LIGHT
- EXISTING TREE
- EXISTING LANDSCAPE
- EXISTING PLANT
- EXISTING ANIMAL
- EXISTING INSECT
- EXISTING MICROBIAL
- EXISTING PLANT
- EXISTING ANIMAL
- EXISTING INSECT
- EXISTING MICROBIAL

EXHIBIT

11 A

THE BEARINGS, AS SHOWN HEREON, REFER TO THE STATE PLANE GRID DATUM; THE WEST RIGHT-OF-WAY LINE OF SUNSHINE STATE PARKWAY, BEING N 01° 05' 04" W (N.A.D. 1983, 1990 ADJUSTMENT.)



STATION AND OFFSETS BASED ON PALM BEACH COUNTY PROJECT 2001504 CENTERLINE OF CONSTRUCTION

THIS SKETCH DOES NOT REPRESENT A BOUNDARY SURVEY.

SEE SHEET 1 FOR LEGAL DESCRIPTION

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS LEGAL DESCRIPTION AND SKETCH MEETS THE TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF LAND SURVEYORS PURSUANT TO SECTION 472.029, FLORIDA STATUTES.

ADAIR & BRADY, INC.
LB-604

BY: *[Signature]* FOR THE FIRM
DENNIS PAINTER
REGISTERED LAND SURVEYOR, FLORIDA CERTIFICATE NO. 3542



ADAIR & BRADY, INC.
CONSULTING ENGINEERS • LAND SURVEYORS
3461 FAIRLANE FARMS ROAD
WELLINGTON, FL 33414
(561) 383-7480 (561) 383-7485 FAX

NOT VALID WITHOUT EMBOSSED SURVEYOR'S SEAL AFFIXED.

SHEET 2 OF 2

SKETCH OF
LEGAL DESCRIPTION PARCEL 308
BOCA RIO ROAD

DRAWN: FH	DATE	W.O. 00065
FIELD:	01-19-09	
F.B.	SCALE	LS 6995-308
PG.	NONE	

P: 00065-BOCA RIO ROAD\LEGAL-PARCEL-308.DGN

3:11:02 PM 1/19/2009

SEC. 20	TRF. 47	NO. 42
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EXHIBIT "A"

LEGAL DESCRIPTION
BOCA RIO ROAD
RIGHT-OF-WAY ACQUISITION
PARCEL 108

Being a portion of Tract 96, Block 76, PALM BEACH FARMS COMPANY PLAT NO. 3, as recorded in Plat Book 2, Page 45, also being a portion of that parcel described in Official Records Book 2318, Page 1301, Public Records of Palm Beach County, Florida, said portion being more particularly described as follows:

BEGINNING at a point on a line that is 60.00 feet west of and parallel with the west right-of-way line of the Sunshine State Parkway, said point being on the south line of Tract 96; thence South $89^{\circ}37'48''$ West along said south line, 10.00 feet; thence North $01^{\circ}05'04''$ West along a line that is 70.00 feet west of and parallel with the west right-of-way line of the Sunshine State Parkway, 220.01 feet to a point on the north line of that parcel described in Official Records Book 2318, Page 1301; thence North $89^{\circ}37'56''$ East along said north line, 10.00 feet to a point on a line that is 60.00 feet west of and parallel with the west right-of-way line of the Sunshine State Parkway; thence South $01^{\circ}05'04''$ East along said parallel line, 220.01 feet to the POINT OF BEGINNING.

Containing 2,200 square feet or 0.051 acres, more or less.

Bearings refer to the State Plane Grid Datum, N.A.D. 1983, 1990 Adjustment; the west line of the Sunshine State Parkway bearing: North $01^{\circ}05'04''$ West.

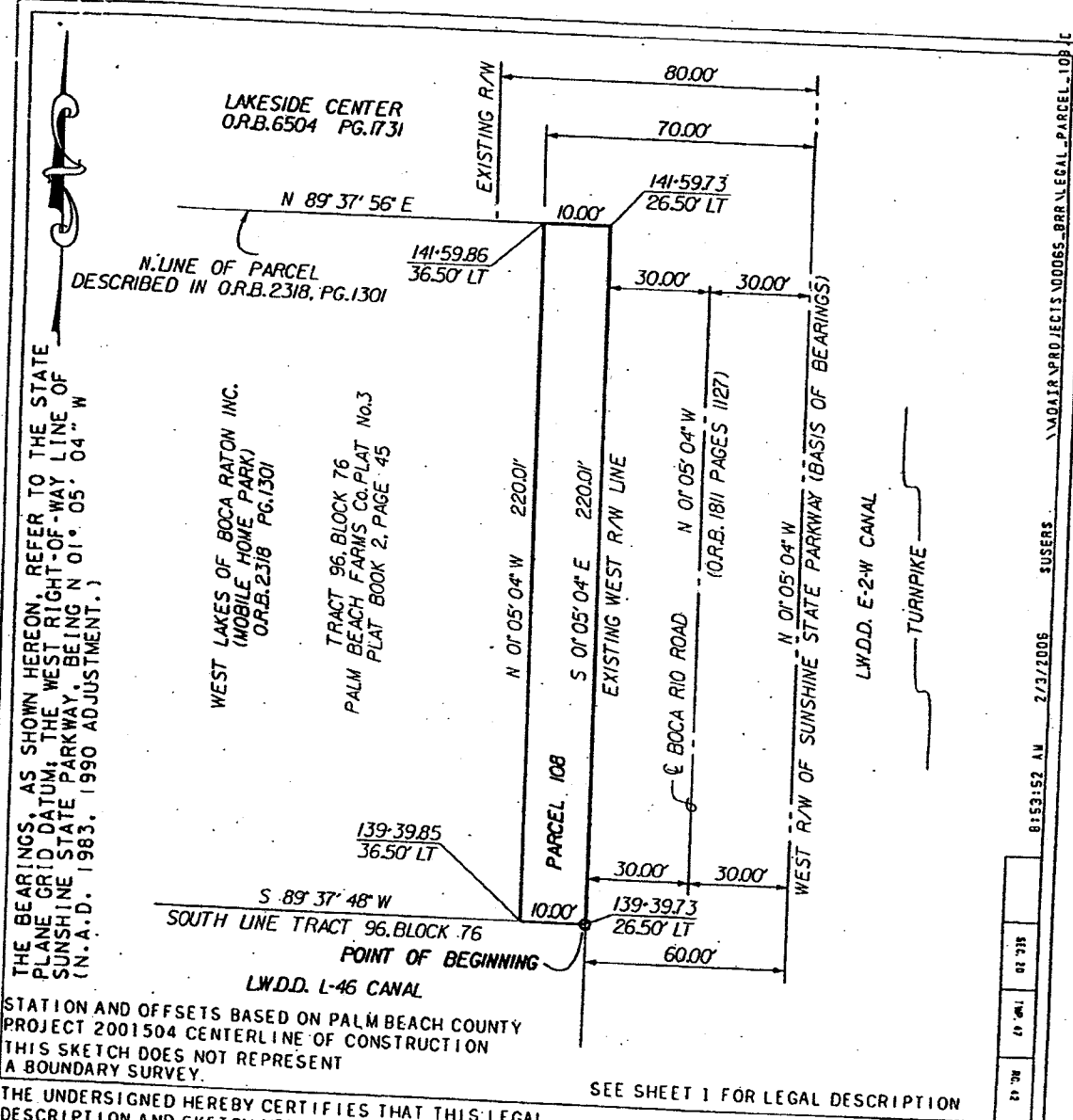
SHEET 1 of 2
LS 6995-108

EXHIBIT

tabbles

"B"

EXHIBIT "A"



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 3461 FAIRLANE FARMS ROAD
 WELLINGTON, FL 33414
 (561) 383-7480 (561) 383-7485 FAX

SHEET 2 OF 2			
SKETCH OF LEGAL DESCRIPTION PARCEL 108 BOCA RIO ROAD			
DRAWN: FH	DATE	W.O. 00065	
FIELD:	02-01-05		
F.B.	SCALE	LS 6995-108	
PG.	NONE		

NOT VALID WITHOUT EMBOSSED SURVEYOR'S SEAL AFFIXED.

8:53:52 AM 2/3/2005 SUSERS \\\ADAIR\PROJECTS\00065_BRR\LEGAL_PARCEL_108.DWG

EXHIBIT "B"

BOCA RIO ROAD PALMETTO PARK ROAD TO GLADES ROAD PALM BEACH COUNTY, PROJECT # 2001504

SAFETY

Boca Rio Road is currently a Two (2) lane undivided urban roadway within an existing 60 ft. to 80 ft. varying width right-of-way. The widening of Boca Rio Road from Palmetto Park Road to Glades Road as a four (4) lane divided roadway with a curb and gutter sodded island will improve the traffic performance of this segment of road due to the extra travel lane added in each direction. The design of this project has been done in accordance with the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (The Florida Greenbook), as adopted and approved by the Florida Department of Transportation (FDOT).

COST

The cost of improving Boca Rio Road from Palmetto Park Road to Glades Road, from a two (2) (4) lane undivided roadway to a four (4) lane divided roadway, had been estimated prior to beginning design. The appropriate funding for design, right-of-way acquisition and construction was budgeted in the County's Five Year Road program in fiscal years 2001 through 2009. During the design of the roadway, reasonable efforts were made to minimize the areas to be acquired through condemnation.

ALTERNATE ROUTES

Boca Rio Road from Palmetto Park Road to Glades Road is a heavily traveled roadway, which provides one of the most direct route for vehicles traveling in a north-south direction through the unincorporated area of Boca Raton. The Palm Beach County Comprehensive Plan (Thoroughfare Right-of-Way-Identification Map), has for many years, defined this route as a route to be improved to meet traffic demands at full development of the County. Palm Beach County's Comprehensive Plan has been prepared to meet the requirements of Chapter 163, F. S. and Rule 9J-5, F.A.C., and to address the needs and interests of the County's residents and visitors.

Alternate routes were considered in lieu of improving Boca Rio Road, however, since this section of roadway is existing and most of the existing ultimate right-of-way is in place it was concluded that an alternate route was not feasible. In addition, construction of an alternate route through this very busy community would have disrupted or displaced numerous residential and business properties, be more costly and result in unnecessary impacts to the environment.

LONG RANGE PLANNING

The development of this project is in conformance with Palm Beach County's 2030 Long Range Transportation Plan. The 2030 Long Range Transportation System Plan is a 25-year forecast based on projected regional needs identified through the process of forecasting travel demand, evaluating system alternatives and selecting those options which best meet the mobility, safety, and other needs of the County, considering financial, environmental and social constraints. The plan serves as the preliminary tool used for transportation planning in Palm Beach County.

ENVIRONMENTAL IMPACTS

Boca Rio Road exists along an established roadway corridor and the proposed improvements will have minimal impacts to the environment. This roadway improvement project is expected to be permitted through the appropriate environmental regulatory agencies.

Below is a more detailed outline of the reasons for each type of acquisition needed for the improvement of Boca Rio Road, from Palmetto Park road to Glades Road.

PARTIAL TAKE IN FEE SIMPLE FOR ADDITIONAL RIGHT OF WAY

As stated above the existing right-of-way is mostly 60 ft. through the corridor with the exception of the southernmost 800 ft. and the northernmost 1000 ft. of Boca Rio Road which is 80 ft. wide. In order to reduce right-of-way acquisition in this very busy segment the Typical Section was modified to fit the proposed widening within 70 ft. which reduced the need for additional right-of-way from 20 ft. to 10 ft wide. This resulted in a significant reduction in the need for Embankment Easements and Temporary Construction Easements.

EASEMENT ACQUISITIONS FOR PERMANENT EASEMENTS

Areas where the finished sidewalk elevation will be 2 ft or more above the existing grade, require acquisition of a permanent easement. This easement prevents the abutting owner from removing the underlying fill and thereby undermining the sidewalk. In cases where surface water ponding could occur on the adjacent property, it might require the placement of drainage structures within the permanent easements to convey that ponding water into the roadway drainage system or to adjacent canals.

EASEMENT ACQUISITIONS FOR TEMPORARY ACCESS, SLOPING & GRADING

Temporary Construction Easements are required (expiring after construction) adjacent to the widened right of way (or the Permanent Easements if acquired) in order to give construction vehicles and workers, access to the outside edges of the work area. In some cases these TCEs are also used to regrade the existing ground to prevent ponding of surface water and to direct it to a proper outfall. TCEs are also used to grade and harmonize the adjacent properties with the road right-of-way.

LEGAL DESCRIPTION
BOCA RIO ROAD
EMBANKMENT EASEMENT
PARCEL 208

Being a portion of Tract 96, Block 76, PALM BEACH FARMS COMPANY PLAT NO. 3, as recorded in Plat Book 2, Page 45, also being a portion of that parcel described in Official Records Book 2318, Page 1301, Public Records of Palm Beach County, Florida, said portion being more particularly described as follows:

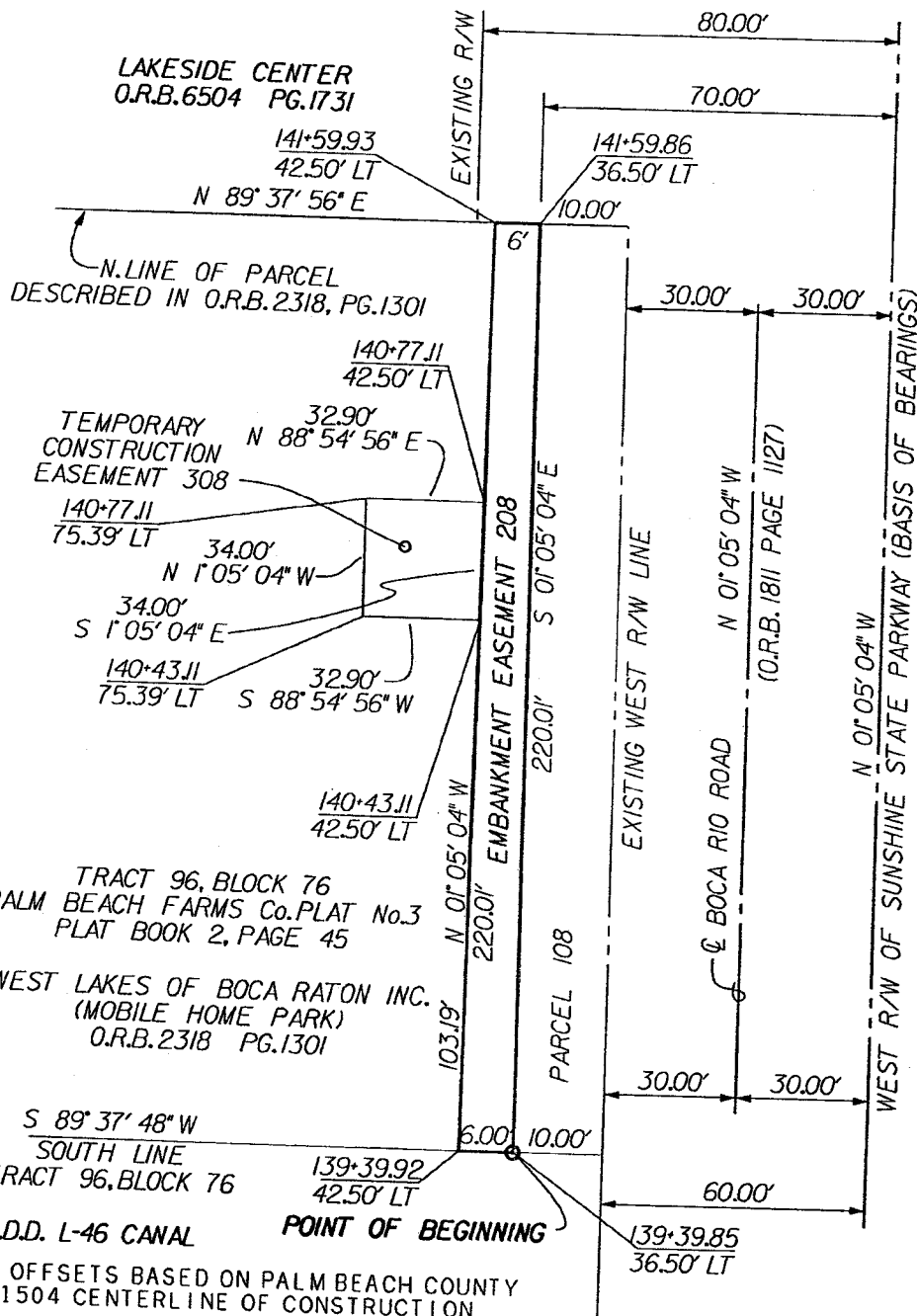
BEGINNING at a point on a line that is 70.00 feet west of and parallel with the west right-of-way line of the Sunshine State Parkway, said point being on the south line of Tract 96; thence South $89^{\circ}37'48''$ West along said south line, 6.00 feet; thence North $01^{\circ}05'04''$ West along a line that is 76.00 feet west of and parallel with the west right-of-way line of the Sunshine State Parkway, 220.01 feet to a point on the north line of that parcel described in Official Records Book 2318, Page 1301; thence North $89^{\circ}37'56''$ East along said north line, 6.00 feet to a point on a line that is 70.00 feet west of and parallel with the west right-of-way line of the Sunshine State Parkway; thence South $01^{\circ}05'04''$ East along said parallel line, 220.01 feet to the south line of Tract 96 and the POINT OF BEGINNING.

Containing 1,320 square feet or 0.030 acres, more or less.

Bearings refer to the State Plane Grid Datum, N.A.D. 1983, 1990 Adjustment; the west line of the Sunshine State Parkway bearing: North $01^{\circ}05'04''$ West.

SHEET 1 of 2
LS6995-208

THE BEARINGS, AS SHOWN HEREON, REFER TO THE STATE PLANE GRID DATUM; THE WEST RIGHT-OF-WAY LINE OF SUNSHINE STATE PARKWAY, BEING N 01° 05' 04" W (N.A.D. 1983, 1990 ADJUSTMENT.)



LW.D.D. E-2-W CANAL
TURNPIKE

STATION AND OFFSETS BASED ON PALM BEACH COUNTY PROJECT 2001504 CENTERLINE OF CONSTRUCTION

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ADAIR & BRADY, INC.
LB-604

BY: *[Signature]* FOR THE FIRM
DENNIS PAINTER
REGISTERED LAND SURVEYOR, FLORIDA CERTIFICATE NO. 3542



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SHEET 2 OF 2

SKETCH OF
LEGAL DESCRIPTION PARCEL 208
BOCA RIO ROAD

DRAWN: FH	DATE	W.O. 00065
FIELD:	01-19-09	
F.B.	SCALE	LS 6995-208
PG.	NONE	

LEGAL DESCRIPTION
BOCA RIO ROAD
TEMPORARY CONSTRUCTION EASEMENT
PARCEL 308

Being a portion of Tract 96, Block 76, PALM BEACH FARMS COMPANY PLAT NO. 3, as recorded in Plat Book 2, Page 45, also being a portion of that parcel described in Official Records Book 2318, Page 1301, Public Records of Palm Beach County, Florida, said portion being more particularly described as follows:

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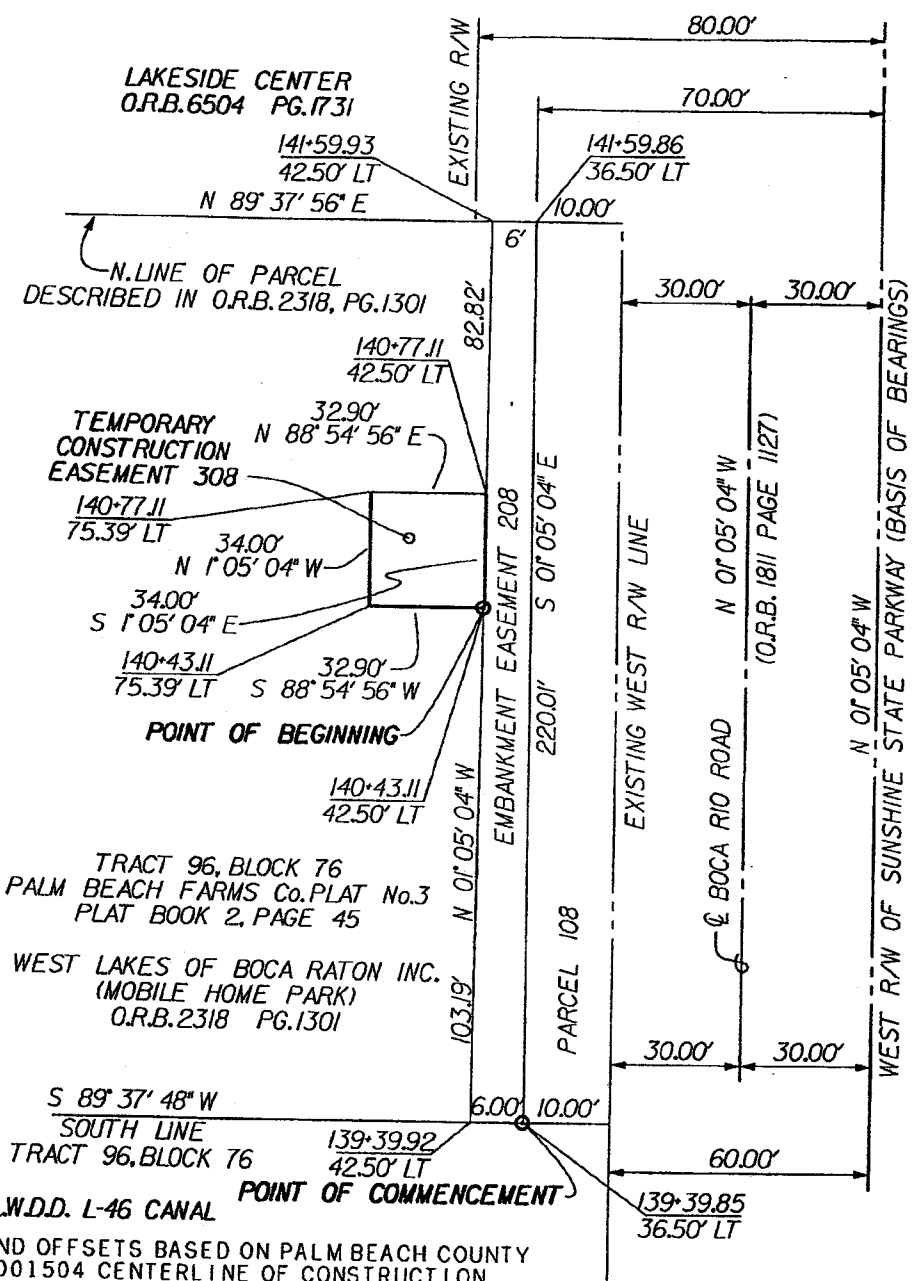
Containing 1,119 square feet or 0.026 acres, more or less.

Bearings refer to the State Plane Grid Datum, N.A.D. 1983, 1990 Adjustment; the west line of the Sunshine State Parkway bearing: North $01^{\circ}05'04''$ West.

SHEET 1 of 2
LS6995-308

SEC. 20	TRP. 47	RD. 42
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THE BEARINGS, AS SHOWN HEREON, REFER TO THE STATE PLANE GRID DATUM; THE WEST RIGHT-OF-WAY LINE OF SUNSHINE STATE PARKWAY, BEING N 01° 05' 04" W (N.A.D. 1983, 1990 ADJUSTMENT.)



LW.D.D. E-2-W CANAL
TURNPIKE

STATION AND OFFSETS BASED ON PALM BEACH COUNTY PROJECT 2001504 CENTERLINE OF CONSTRUCTION

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ADAIR & BRADY, INC.
LB-604

BY: *[Signature]* FOR THE FIRM
DENNIS PAINTER
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SHEET 2 OF 2

SKETCH OF
LEGAL DESCRIPTION PARCEL 308
BOCA RIO ROAD

DRAWN: FH	DATE	W.O. 00065
FIELD:	01-19-09	
F.B.	SCALE	LS 6995-308
PG.	NONE	