

Background and Justification (continued):

The Board action would authorize a settlement, by entry into a Stipulated Final Judgment, of the compensation for the acquisition of Parcels 814 and 815 in the amount of \$655,000 for the permanent easements acquired, damages to the remaining property, and any other damages and costs to cure any damages, \$68,572.14 in attorney's fees calculated pursuant to applicable Florida law, and \$59,641.30 in experts' fees and costs, plus \$170 for the fees of the clerk of the court.

The relocation of the canal will cause two (2) buildings on the property to lose much of their parking and vehicular access to one side of the buildings. Additionally, vehicular, particular truck, access to the other sides of the buildings is made more difficult by the taking and canal relocation. The County had an appraisal prepared by Diane Jenkins of Jenkins Appraisal Services, Inc. in the amount of \$247,100. This appraisal was based on the proposition that the parking and access to the buildings could be restored on another part of the property and, thus, the damages to the remaining property could be completely "cured." This appraisal was not approved by the Florida Department of Transportation which, as permitting agency for the project and partial funder of the project, reserved the right to approve appraisals.

In February 2008, a second appraisal was prepared by Bob Gallion of Gallion Wilson, LLC. This appraisal was in the amount of \$460,200. This appraiser opined that the cost of "curing" the parking and access problems was not economically justified because, after the construction of the cured parking at significant cost the utility of the buildings for their intended use and, therefore, their value were still greatly diminished. Thus, with no cured parking/access, opined Gallion, the buildings were rendered valueless and should be demolished. Gallion opined that the easements represented 33% of the total value of the land which the easements encumbered. An offer to owner was made based on this appraisal in the amount of \$460,200. Approximately a year later, Gallion prepared an updated appraisal in the amount of \$551,400.

The owner had an appraisal prepared by Michael McElveen of Urban Economics Incorporated in the amount of \$748,900. This appraiser agreed with Gallion that the building's parking issues could be not be economically restored and that they were rendered valueless. However, Mr. McElveen opined that the easements represented 90% of the total value of the land which the easements encumbered. In determining the underlying value of the land, the appraiser used sales he felt were comparable to the subject property that were higher than those used by Gallion. Additionally, Mr. McElveen felt the remaining land, being constrained by the taking of the easements and use of same for a canal, would be more difficult to develop than before the taking.

The owner also claimed \$44,000 to relocate an irrigation/drainage pump which was in the area of the easements acquired. This cost was found to be justified and reasonable by the County's outside engineering consultant, Wantman Group. The cost was not included in either the Jenkins appraisal or the Gallion appraisal. When it is added to the Gallion and McElveen appraisals, the total compensation claim, excluding fees and costs, was between \$595,400 (Gallion) and \$792,000 (McElveen).

This settlement does not include damages to the tenant owned fixtures constructed within the buildings on the property and the cost, if any tenants relocate due to the taking, of such relocation. Currently, the tenants have no immediate plans to relocate because the owner is taking a "wait and see" approach on the demolition of the aforementioned buildings.

So that clear title can be transferred to Lake Worth Drainage District, as part of the settlement, the owner has agreed to execute applications to the South Florida Water Management District for the Release of Mineral, Canal, and Road Reservations as well as a fully completed, executed, and notarized Beneficial Interest and Disclosure Affidavit necessary to process those applications.

(Continued on page 4)

Background and Justification (continued):

This settlement is cost-effective in light of the significant savings of expenses which would be incurred if this matter were tried and avoids the potential of a larger judgment at trial (and greater attorney's fees to the owner). The owner's attorney also agreed to waive a claim for non-monetary benefit fees for an alleged role in the County's decision to convert the takings from fee simple to permanent exclusive easement. It is not clear what the amount or viability of this claim is, but it would likely be made in the event the settlement is not approved.

INTEROFFICE COMMUNICATION
PALM BEACH COUNTY
BUDGET AVAILABILITY STATEMENT

DATE: July 21, 2009

TO: Barry S. Balmuth, P.A.
Outside Attorney

FROM: Alexis T. Willhite, Fiscal Manager *adm*
Administrative Services

RE: W Atlantic/1330' W of Lyons to Starkey
Project # 2004602
Eminent Domain Settlement
Parcels: 814 and 815 \$783,383.44

BOARD MEETING DATE: August 18, 2009

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ 00336

FUNDING STATUS: FULLY FUNDED

Is Item Included in Current Budget? Yes X No

Budget Account No:

Fund 3500 Dept 361 Unit 1085 Object 6120

Recommended Sources of Funds/Summary of Fiscal Impact:

Transportation Improvement Fund
W Atlantic Ave/W of Lyons to E of Fla Turnpike

| | |
|--------------------------------|----------------|
| Land and Damages | \$655,000.00 |
| Attorney's Fees | \$ 68,572.14 |
| Expert Fees and Costs | \$ 59,641.30 |
| Fees of the Clerk of the Court | \$ 170.00 |
| Total Settlement | \$783,383.44 |
| Appraised Value | <\$551,400.00> |
| Fiscal Impact | \$231,983.44 |

This BAS is valid for up to ninety days from its date of issuance.
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IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

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

CASE NO.: 502008CA023514XXXXMBAH

Petitioner,

v.

LEONARD V. MECCA, as Trustee under
Land Trust dated April 30, 1994,
LEONARD V. MECCA, as Trustee of the
Trust Under the Will of Vito M. Mecca,
Deceased, BEDNER GROWERS, INC.,
THE HOLE-IN-THE-WALL FEED AND
SUPPLY, INC., DAVID MIZER, TRIPLE
C GROVES, LLP, and ANNE M.
GANNON, as Palm Beach County Tax
Collector,

PARCELS 814 AND 815

Defendants.

MEDIATED SETTLEMENT AGREEMENT BETWEEN
PALM BEACH COUNTY AND LEONARD V. MECCA,
as Trustee under Land Trust dated April 30, 1994

PALM BEACH COUNTY ("COUNTY") and LEONARD V. MECCA, as Trustee under
Land Trust dated April 30, 1994 ("MECCA") agree as follows:

1. This agreement is subject to the approval of the Palm Beach County Board of County Commissioners and subject to agreement between the parties regarding the award of attorney's fees and expert fees and costs.
2. If approved by the Palm Beach County Board of County Commissioners, the parties shall stipulate to the entry of a Partial Final Judgment by which, subject to apportionment, if any, to lessees, mortgagees and any other interest holders, MECCA shall have and recover from COUNTY \$655,000 as full compensation inclusive of improvements, land, severance damages, business

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damages, damage to any improvements, and any and all other damages and compensation whether claimed or not and whether know or unknown for and relating to the taking of Parcels 814 and 815 with the exception only of attorney's fees and expert fees and costs and the compensation for the damages to any tenant owned fixtures and other tenant owned property plus expenses for relocation/moving of any equipment or other movable tenant owned property. Payment for damages to any tenant-owned fixtures and other tenant-owned property plus expenses for relocation/moving of any equipment or other movable tenant-owned property shall be made separately.

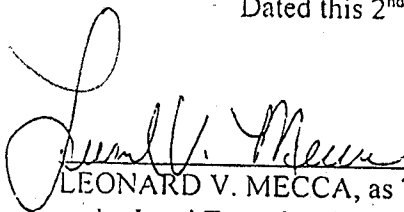
3. The sums referenced in the preceding paragraph is inclusive of all sums deposited for Parcels 814 and 815 under the Order of Taking entered in this cause. Palm Beach County shall only be required to pay into the registry of the court the difference between the sums in the preceding paragraph and the amounts previously deposited.

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


5. MECCA shall execute an Application to the South Florida Water Management District for Release of Mineral, Canal, and Road Reservations.

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

Dated this 2nd day of June , 2009.


LEONARD V. MECCA, as Trustee
under Land Trust dated April 30, 1994

PALM BEACH COUNTY

By: 
L. Morton Rose. P.E.

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Attorney for Mecca


Jay J. Bartlett

Attorney for Palm Beach County


Barry S. Balmuth

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

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

CASE NO.: 50-2008-CA-023514-XXXXMB
Civil Division: AH

Petitioner,

PARCELS: 814 and 815

vs.

LEONARD V. MECCA, as Trustee
under Land Trust dated April 30,
1994; LEONARD V. MECCA, as
Trustee of the Trust Under the Will
of Vito M. Mecca, Deceased;
BEDNER GROWERS, INC.; THE
HOLE IN THE WALL FEED AND
SUPPLY, INC.; PAUL J. KREBS,
d/b/a TRIPLE C GROVES; and
ANNE M. GANNON, as Palm Beach
County Tax Collector,

Defendants.

STIPULATED PARTIAL FINAL JUDGMENT

THIS CAUSE having come on to be heard on the Joint Motion of the parties, Petitioner, PALM BEACH COUNTY, and Defendants, LEONARD V. MECCA, as Trustee under Land Trust dated April 30, 1994, and, LEONARD V. MECCA, as Trustee of the Trust Under the Will of Vito M. Mecca, Deceased (both of these Defendants will collectively be referred to hereinafter as "MECCA"), for the entry of this judgment, and the Court, finding that the compensation to be paid to the Defendants is full and just, and otherwise being fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED as follows:

1. Subject to apportionment, if any, to other defendants in this cause, MECCA, shall have and recover from Petitioner, PALM BEACH COUNTY, the sum of **SIX HUNDRED FIFTY FIVE THOUSAND DOLLARS AND NO CENTS (\$655,000.00)** as full compensation for the taking of the permanent exclusive embankment easements, identified and described in the Agreed Order of Taking entered in this cause as Parcels 814 and 815, inclusive of improvements, severance damages including, but not limited to, damages to buildings and other improvements, business damages, relocation costs, including relocation of any and all irrigation and drainage pumps, and any and all other damages and costs to cure those damages and all other claims that were brought or that could have been brought, known and unknown, for, resulting from, and/or relating to the taking of Parcels 814 and 815 with the exception only of attorney's fees and expert fees costs and compensation for the damages, if any, to any tenant-owned fixtures and other tenant-owned immovable property or other improvements and for the relocation/moving costs of any tenant-owned equipment or other movable tenant-owned property and for attorney's fees and costs of tenant defendants. Payment for any such compensation for the damages to any tenant-owned fixtures or immovable property or other improvements and for relocation/moving costs of any tenant-owned equipment or other movable property and tenants' attorney's fees and costs shall be made separately.

2. The sum of **FIVE HUNDRED FIFTY ONE THOUSAND FOUR HUNDRED DOLLARS AND NO CENTS (\$551,400.00)** having previously been deposited by Petitioner into the registry of the Court, Petitioner shall, within thirty (30) days of receipt of a certified copy of

this judgment, deposit the further sum of ONE HUNDRED THREE THOUSAND SIX HUNDRED DOLLARS AND NO CENTS (\$103,600) into the registry of the Court, representing the difference between the agreed to compensation referenced in the preceding paragraph and the amount previously deposited, plus \$170 for the fee for the Clerk of the Courts for a total of ONE HUNDRED THREE THOUSAND SEVEN HUNDRED SEVENTY DOLLARS AND NO CENTS (\$103,770.00) to be disbursed to the Clerk of Courts.

3. MECCA, shall have and recover from Petitioner, PALM BEACH COUNTY, full and complete attorney's fees and attorney's costs, other than attorney's fees and attorney's costs for any apportionment proceedings which may occur after the entry of this judgment, of SIXTY EIGHT THOUSAND FIVE HUNDRED SEVENTY TWO DOLLARS AND FOURTEEN CENTS (\$68,572.14).

4. MECCA shall have and recover from Petitioner, PALM BEACH COUNTY, full and complete expert fees and costs, other than expert fees and costs incurred in any apportionment proceedings which may occur after the entry of this judgment, as follows:

| | | |
|----|---|--------------------|
| A. | Gerald M. Ward, P.E. | \$12,078.80 |
| B. | Urban Economics Incorporated | 27,104.20 |
| C. | JMD Engineering, Inc. | 9,337.50 |
| D. | Planner, Anna S. Cotrell & Associates, Inc. | 4,043.80 |
| D. | <u>Environmental Design Group</u> | <u>\$ 7,077.00</u> |
| | TOTAL | \$59,641.30 |

(FIFTY NINE THOUSAND SIX HUNDRED FORTY ONE DOLLARS AND THIRTY CENTS).

5. Accordingly, Petitioner shall, within thirty (30) days of receipt of a certified copy of this judgment, make a check in the amount of **ONE HUNDRED TWENTY EIGHT THOUSAND TWO HUNDRED THIRTEEN DOLLARS AND FORTY FOUR CENTS (\$128,213.44)**, representing the foregoing attorney's fees and attorney's costs and expert fees and costs, payable to the Brickleyer Smoker & Bolves, P.A. Trust Account and mail same to Jay J. Bartlett, Esquire, Brickleyer Smoker & Bolves, P.A., 500 East Kennedy Blvd., Suite 200, Tampa, FL 33602 for further disbursement to the recipients and in the amounts described above without further order of this court.

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

7. Within twenty (20) days of the entry of this Judgment, LEONARD V. MECCA, as Trustee under Land Trust dated April 30, 1994 shall deliver to counsel for PALM BEACH COUNTY originals of fully completed and executed applications to the South Florida Water Management District for the Release of Mineral, Canal, and Road Reservations as well as a fully completed, executed, and notarized Beneficial Interest and Disclosure Affidavit in the form provided by counsel for PALM BEACH COUNTY.

8. MECCA, shall seek no further monies in this cause other than attorney's fees and attorney's costs and expert fees and expert costs for any apportionment proceedings which may occur after the entry of this judgment.

9. Title to the permanent exclusive embankment easements on property identified as Parcels 814 and 815 in the Agreed Order of Taking entered in this cause which Agreed Order of Taking was recorded in the public records of Palm Beach County at Official Records Book 23138, Page 1255, which vested in the Petitioner pursuant to that Agreed Order of Taking and deposit of money thereunder, is approved, ratified and confirmed.

10. The Court retains jurisdiction of this action to enforce the terms of this judgment, to apportion the award, to make an award of the fees and costs, if any, described in paragraph 8, and to award compensation for the damages to any tenant-owned fixtures or immovable property or other improvements and for relocation/moving costs of any tenant-owned equipment or other movable property, if any, and tenants' attorney's fees and costs, if any. 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 West Palm Beach, Palm Beach County, Florida, this ____
day of _____, 200_.

EDWARD H. FINE
Circuit Court Judge

Copies furnished to all parties on the attached service list.

STIPULATION AND MOTION FOR ENTRY OF FINAL JUDGMENT


Comes now the Petitioner, PALM BEACH COUNTY, and the Defendants, LEONARD V. MECCA, as Trustee under Land Trust dated April 30, 1994, and LEONARD V. MECCA, as Trustee of the Trust Under the Will of Vito M. Mecca, Deceased, and respectfully stipulate to, and jointly move for, the entry of the foregoing Stipulated Final Judgment.

By executing below, all counsel represent that they are authorize to enter into this stipulation.

BARRY S. BALMUTH, P.A.

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