

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: August 18, 2009

Consent       Regular  
 Public Hearing

Department

Submitted By: County Attorney

Submitted For:

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to authorize a settlement of certain expert fees in the eminent domain proceeding entitled Palm Beach County v. E.F. Johns, Ltd., et al, Case No.: 502007 CA002957XXXMBAD, for the improvement of Lyons Road.

**Summary:** This action would authorize a settlement of expert fees incurred by the owner in an eminent domain proceeding for property acquired for the improvement of Lyons Road from Glades Road to Yamato Road (Project No. 1998504), by paying \$90,000. 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 detention 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 the property identified as Parcel 704, 705, 705A, and 705B. The owner claimed the taking created a limitation on the ability to develop the remaining property. The County's experts disagreed with this contention.

The underlying claims for compensation and attorney's fees for the property and damages were previously settled with approval of the Board of County Commissioners. In an eminent domain proceeding, the County is required to pay reasonable expert fees and costs. The owner made a motion to tax expert fees and costs. The fee claims were reviewed by the experts hired by the County in the underlying case. Several fee claims were found to be reasonable by the County's experts and an order was entered awarding these fees. However, the owner made claims for the engineering landscape architect services of the Keith and Schnars firm in the amount of \$125,105 and for a trial exhibit illustrator, Juris Corporation, in the amount of \$34,837.50. The County's experts opined that reasonable fees for these services were between \$50,297 and \$52,500 for Keith and Schnars and \$7,500 for Juris Corporation. The proposed resolution involves a payment of \$75,000 for the fees of Keith and Schnars and \$15,000 for the fees of Juris Corporation, for a total amount of \$90,000.

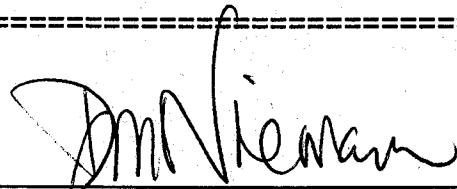
**Attachments:**

1. Budget Availability Statement.
2. Proposed Stipulated Order Awarding Expert Fees and Costs to E.F. Johns, Ltd.
3. Correspondence indicating Engineer Department's approval of settlement.

Recommended by: \_\_\_\_\_

County Attorney

Date



7/31/09

Approved by: \_\_\_\_\_

N/A

Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital Expenditures	<u>\$90,000.00</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Cost	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenue	<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>
<b>NET FISCAL IMPACT</b>	<u><b>\$90,000.00</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>	<u><b>-0-</b></u>
# ADDITIONAL FTE	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
POSITIONS (Cumulative)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

Is Item Included in Current Budget? Yes X No

Budget Account No.:

Fund 3505 Agency 361 Org. 0667 Object 6120 Amount \$90,000.00  
Reporting Category \_\_\_\_\_

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

Expert Fees and Costs  
Net Fiscal Impact \$90,000.00

**III. REVIEW COMMENTS**

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

<p><u>WOSU</u> 8/10/09 OFMB 8/15/09</p>	<p><u>John J. Jaworski</u> 8/10/09 Contract Dev. and Control</p>
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**B. Legal Sufficiency:**

Philip M. Meyer  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

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

INTEROFFICE COMMUNICATION  
PALM BEACH COUNTY  
BUDGET AVAILABILITY STATEMENT

DATE: July 20, 2009  
TO: Barry S. Balmuth  
Outside Attorney  
FROM: Alexis T. Willhite, Fiscal Manager  
Administrative Services *atw*  
RE: Lyons Rd/Glades Rd to Yamato Rd  
Project # 1998504  
PBC v E.F. Johns, Ltd. Et al.  
Case # 50 2007 CA 002957XXXXMB (AD)  
Expert Fees  
Parcels: 102, 704, 705, 705A and 705B \$90,000

BOARD MEETING DATE: August 18, 2009

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ 00331

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

Expert Fees and Costs \$90,000

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

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

**CASE NO. 50 2007 CA 00-2957 XXXXMB AD**

**Petitioner,**

**v.**

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

**PARCELS 102, 704, 705, 705A and 705B**

**Defendant.**

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**STIPULATED ORDER AWARDING EXPERT FEES AND COSTS  
TO E.F. JOHNS, LTD.**

**THIS CAUSE** came before the court on the joint motion for entry of this Order of Petitioner, PALM BEACH COUNTY, and Defendant, E.F. JOHNS, LTD., for the Entry of this Order, and the Court was fully advised in the premises. Thereupon, it is hereby:

**ORDER AND ADJUDGED that,**

1. Pursuant to Section 73.091 of the Florida Statutes, Defendant, E.F. JOHNS, LTD., shall have and recover from Petitioner, PALM BEACH COUNTY, the following expert fees and costs:

A. Keith and Schnars, P.A.:	\$75,000.00
B. Juris Corporation:	\$15,000.00

2. The foregoing amounts constitute full and complete payment to Defendant, E.F. JOHNS, LTD., of expert fees and costs and Defendant shall seek no further payment for expert fees and costs in this cause.

3. Within thirty (30) days of the Petitioner's receipt of a certified copy of this order, Petitioner shall make a check in the amount of NINETY THOUSAND DOLLARS AND NO

CENTS (\$90,000), representing the total of the awards set forth in paragraph one of this Order, payable to the Forman, Hanratty & Montgomery Trust Account and mail same to Charles R. Forman, Esquire, 1323 SE 3<sup>rd</sup> Avenue, Fort Lauderdale, Florida 33316 for further disbursement of the foregoing awards.

**DONE AND ORDERED** in West Palm Beach, Palm Beach County, Florida this \_\_\_\_ day of \_\_\_\_\_, 2009.

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**DAVID FRENCH  
CIRCUIT COURT JUDGE**

Copies Furnished To:

Barry S. Balmuth, Esquire  
1601 Forum Place, Suite 1101  
West Palm Beach, Florida 33401

Charles R. Forman, Esquire  
1323 SE 3<sup>rd</sup> Avenue  
Fort Lauderdale, FL 33316

**STIPULATION TO, AND JOINT MOTION FOR, THE ENTRY OF,  
STIPULATED ORDER AWARDING EXPERT FEES AND COSTS  
TO E.F. JOHNS, LTD.**

Comes now the Petitioner, PALM BEACH COUNTY and Defendant, E.F. JOHNS, LTD.,


Fees and Costs to E.F. JOHNS, LTD. By executing this motion the undersigned counsel certify that they are authorized to enter into this stipulation and joint motion on behalf of their respective clients.

**BARRY S. BALMUTH, P.A.**

**FORMAN, HANRATTY &  
MONTGOMERY**

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**BARRY S. BALMUTH, ESQUIRE**  
Florida Bar No. 0868991  
Counsel for Palm Beach County  
1601 Forum Place, Suite 1101  
West Palm Beach, Florida 33401  
Telephone: (561) 242-9400



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**CHARLES R. FORMAN, ESQUIRE**  
Florida Bar No. 229253  
Attorneys for Defendant, E.F. Johns, Ltd.  
1323 SE 3<sup>rd</sup> Avenue  
Fort Lauderdale, FL 33316  
Telephone: (954) 522-9441

**Morton Rose**

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To: Barry S. Balmuth  
Cc: Philip Mugavero  
Subject: RE: Expert Fee Settlement in Johns

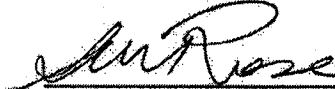
Mr. Balmuth

Pursuant to the entry of an Order of Taking, for the acquisition of fee simple Parcel 102, consisting of 7.43 acres for the construction of a detention pond related to the widening of Lyons road from Glades Road to Yamato Road and for the acquisition of four temporary construction easements on property identified as Parcel 704, 705, 705A, and 705B. The negotiated settlement in the amount of \$90,000 for the payment of Expert Fees is acceptable.

Approved:



Tanya McConnell, P.E.  
Deputy County Engineer



Morton Rose, P.E.  
Five Year Road Program Manager

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From: Barry Balmuth [mailto:balmuthlaw@gmail.com] On Behalf Of Barry S. Balmuth  
Sent: Friday, July 24, 2009 1:35 PM  
To: Morton Rose  
Cc: Philip Mugavero  
Subject: Expert Fee Settlement in Johns

Morton:

Please indicate the Engineering Department's approval of the settlement of expert fees in PB v. Johns described in the attached Agenda Item by signing below and having the Tanya sign same and returning this E-mail to me in pdf format or by faxing. Alternatively, you can evidence the approval by separate E-mails to me from you and Tanya indicating same.

Approved:

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Tanya McConnell  
Deputy County Engineer

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Morton Rose  
Five Year Road Program Manager

Thank you. Needless to say, please contact me if you have any questions or need further information.