

Agenda Item #: **5C-2**

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 17, 2009

☐ Consent ☒ Regular
☐ Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: approve a settlement in the amount of \$338,800, including attorney's fees and all reasonable expert fees and costs for parcel 18 in the eminent domain action styled Palm Beach County v. Michael Martin, et al., Case No. 502005CA006339XXXMB, for the fee simple taking of five acres of vacant land in Indian Lake Estates.

Summary: The County has negotiated a settlement in the amount of \$338,800, including attorney's fees and reasonable expert fees and costs, subject to the approval of the Board of County Commissioners, for parcel 18, which is five acres of vacant land in the Indian Lake Estates subdivision. The expert engineers and appraisers for the County and property owner agreed that the land is buildable and suitable for residential use subject to permitting. The experts for both parties agree that the required permits can be obtained upon payment of the necessary and related expenses. The County previously deposited \$190,000 as its initial good faith deposit and estimate of value. In preparation for trial the County's appraisal was updated and the updated value of the subject parcel through the date of deposit was \$225,000. The property owner's appraiser opined that the value of the subject property was \$430,000. The settlement in this case, if approved, would compensate the property owners in the total amount of \$290,000, plus \$33,000 in attorney's fees and \$15,800 for all reasonable expert fees and costs. Therefore, payment of an additional \$148,800 would constitute full and final settlement of this case in its entirety, including all fees and costs. District 1 (PM)

Background and Justification: The County's initial appraisal in the amount of \$190,000 for parcel 18 was done approximately a year before the order of taking and was what the County's initial good faith deposit was based upon. The County's initial appraisal was updated to \$225,000 through the date of taking, November 8, 2005. A second appraisal was obtained by the County for trial purposes and the County's second appraiser opined the value of the subject parcel was \$225,000 through the date of the taking. The owner's
(Continued on page 3)

Attachments:

1. Proposed Stipulated Final Judgment.

Recommended by: _____

County Attorney

Date

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	\$148,800	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	\$148,800	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No

Budget Account No.: Fund 1226 Department 380 Unit E205 Object 6101


Reporting Category_____

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

C. Departmental Fiscal Review: JK


III. REVIEW COMMENTS

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


 10/9/09
 OFMB
 SN 10/9/09
 (NO)
 CN 10/9/09
 Legal Sufficiency:

Am. J. Javela 10/13/09
Contract Development and Control

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

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

Background and Justification (continued):

appraiser appraised the subject parcel at \$430,000 through the date of taking. Therefore, in order to minimize the County's exposure to a higher jury verdict, additional interest, costs and attorney's fees, this settlement is recommended and very favorable to the County. The proposed settlement has been approved by the Department Director.

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

Petitioner,

v.

MICHAEL MARTIN, et al.,

Respondents.

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

CASE NO: 502005CA006339XXXMB
DIVISION: AD

PARCEL: 18

**STIPULATED FINAL JUDGMENT AS TO PARCEL 18 OWNED
BY DONG KIM LUONG AND PHONG HOANG TRINH**

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 Francisco J. Pines, Esq., Attorney for the Respondents, **Dong Kim Luong and Phong Hoang Trinh**, 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. Respondents, Dong Kim Luong and Phong Hoang Trinh, shall have and recover the sum of **TWO HUNDRED NINETY THOUSAND DOLLARS AND 00/100 CENTS (\$290,000.00)**, as full, just and final compensation to the Respondents for the taking of Parcel 18, excluding attorney's fees and costs, subject to approval of the Palm Beach County Board of County Commissioners. There are no taxes due on Parcel 18.

3. Petitioner, Palm Beach County, having previously deposited the sum of ONE HUNDRED NINETY THOUSAND DOLLARS AND 00/100 CENTS (\$190,000.00) into the Registry of the Court pursuant to the Order of Taking entered on November 8, 2005, and the Respondents, Dong Kim Loung and Phong Hoang Trinh, having previously withdrawn and received this amount as partial payment toward the full compensation, less taxes paid to the Palm Beach County Tax

Collector in the amount of \$372.26. Therefore, the Petitioner is entitled to a credit in that amount towards the final compensation.

4. Petitioner, Palm Beach County, shall within thirty days (30) days from the date of entry of this Stipulated Final Judgment, issue a check in the amount of **ONE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$100,000.00)**, made payable to **BRIGHAM MOORE, LLC, TRUST ACCOUNT**, and mail same to Francisco J. Pines, Esq., Brigham Moore, LLC, 2525 Ponce de Leon Blvd., Suite 625, Coral Gables, Florida, 33134, representing the difference between the agreed upon compensation referenced in paragraph two and the amount previously deposited into the Registry of the Court and distributed for Parcel 18. Respondents' counsel shall make the appropriate disbursements.

5. The Respondents, Dong Kim Luong and Phong Hoang Trinh, shall also have and recover from Petitioner, Palm Beach County, attorney's fees in the amount of \$33,000.00, for monetary benefits calculated pursuant to Florida Law, and all reasonable expert fees and costs in the amount of \$15,800. Accordingly, Petitioner shall within thirty days (30) days from the date of entry this Stipulated Final Judgment, issue a check in the total amount of **FOURTY-EIGHT THOUSAND EIGHT HUNDRED DOLLARS AND 00/100 CENTS (\$48,800.00)**, made payable to **BRIGHAM MOORE, LLC, TRUST ACCOUNT**, and mail same to Francisco J. Pines, Esq., Brigham Moore, LLC, 2525 Ponce de Leon Blvd., Suite 625, Coral Gables, Florida, 33134.

6. Title to Parcel 18, as further described in **Exhibit "A"** attached hereto, which vested in the Petitioner pursuant to the Order of Taking and deposits previously made is hereby approved, ratified and confirmed.

7. The sums paid to the Respondents, Dong Kim Luong and Phong Hoang Trinh, represent full and final compensation for the taking of Parcel 18, and the Respondents will not seek any further monies from the Petitioner in this cause, except as specifically set forth herein.

8. The Court reserves jurisdiction over supplemental proceedings, if any.

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

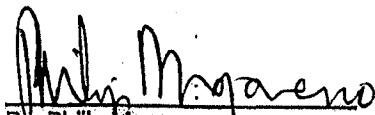
Honorable David French
Circuit Judge

JOINT MOTION

Petitioner, Palm Beach County, and Francisco J. Pines, Esquire, Attorney for the Respondents, Dong Kim Luong and Phong Hoang Trinh, hereby stipulate that they have resolved this case as described above, and move this Court for entry of the foregoing Stipulated Final Judgment.

PHILIP MUGAVERO, ESQ.
Assistant County Attorney
300 N. Dixie Hwy., Suite 359
West Palm Beach, FL 33401-4791

FRANCISCO J. PINES, ESQ.
Brigham Moore, LLC
2525 Ponce de Leon, Suite 625
Coral Gables, Florida 33134

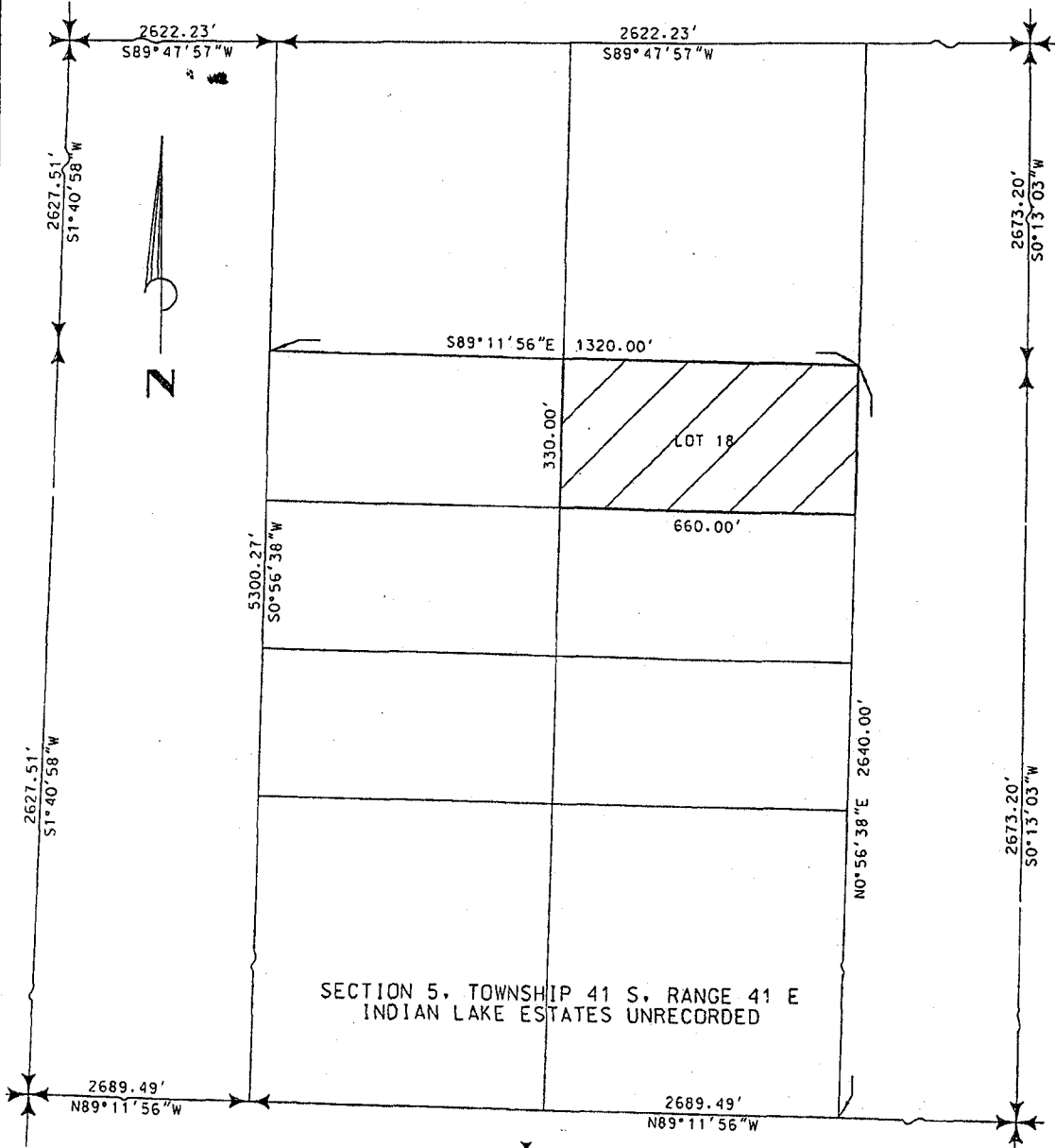

By: Philip Mugavero
Fla. Bar No. 931179


By: Francisco J. Pines
Fla. Bar No. 571741
Fla Bar # 13703

Copies furnished to the parties listed above.

LEGAL DESCRIPTION

Lot 18 of the unrecorded plat of Indian Lake Estates and more particularly described as follows: The North 330.00 feet of the South 2640.00 feet of the East 660.00 feet of the West 1,320.00 feet of the East half of Section 5, Township 41 South, Range 41 East, Palm Beach County, Florida.



- ✚ = SECTION CORNER
- ⊥ = N-S QUARTER CORNER
- ⊥ = E-W QUARTER CORNER

THIS IS NOT A SURVEY.

THIS INSTRUMENT PREPARED BY WILLIAM ETHERIDGE, P.L.S. FLORIDA CERTIFICATE NO. 3173
OFFICE OF THE COUNTY ENGINEER.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED
SURVEYOR AND MAPPER.

NO SEARCH OF THE PUBLIC RECORDS WAS MADE BY THE SIGNING SURVEYOR.

THE NORTH LINE OF SECTION 5 BEARS N89°47'57\"E AND ALL BEARINGS ARE RELATIVE THERETO.

THE EASEMENTS SHOWN ON THE UNRECORDED PLAT ARE NOT SHOWN ON THIS SKETCH.

PROJECT NO. 2005012-03	SHEET 1	PROJECT DESCRIPTION SKETCH PAL-MAR NATURAL AREA SECTION 5, TWP 41 S, RGE 41 E		SCALE 1"=300'	NO.	REVISION	BY	DATE
		DESIGN FILE NAME S-1-05-2275.DGN	DRAWING NO. S-1-05-2280					
		APPROVED WCE CAB CHECKED NJB DATE 11/15/04		P.L.S. ETHERIDGE				
		FIELD BOOK NO. NONE		P.L.S. ETHERIDGE				



PALM BEACH COUNTY
ENGINEERING AND PUBLIC WORKS
ENGINEERING SERVICES
160 AUSTRALIAN AVENUE
WEST PALM BEACH, FL 33406

