

Agenda Item #: **5A-4**
TIME CERTAIN: 10:00 A.M.

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

Meeting Date: December 1, 2009

Consent

Regular

Workshop

Public Hearing

Department:

Submitted By: County Attorney

Submitted For: County Attorney

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on December 15, 2009 at 9:30 a.m.: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, Amending the Palm Beach County Real Property Acquisition, Disposition and Leasing Ordinance, Chapter 22, Article VI of the Palm Beach County Code; Providing for Definitions; Providing for Supermajority Vote; Providing for Creation of a Property Review Committee; Providing for Repeal of Laws in Conflict; Providing for Severability; Providing for Inclusion in the Code of Laws and Ordinances; and Providing for an Effective Date.

Summary: This Amendment amends the Palm Beach County Real Property Acquisition, Disposition and Leasing Ordinance (the "PREM Ordinance") codified in Chapter 22, Article VI of the Palm Beach County Code in order to implement recommendations made by the Palm Beach County Grand Jury. The Amendment adds a provision to the PREM Ordinance requiring that all purchases (including eminent domain), sales and exchanges of real property, other than internal interdepartmental transactions and those pursuant to delegated authority which do not require Board action, be approved by a supermajority (5) vote of the Board. The Amendment also adds a provision requiring the County to establish a "Property Review Committee" ("PRC") within sixty (60) days to review, evaluate and advise the Board regarding real estate transactions involving the purchase (including eminent domain), sale or exchange of real property when such transactions are based on appraisals utilizing hypothetical conditions or extraordinary assumptions, are based upon appraisals assuming change of land use, comprehensive plan amendment or concurrency other than that which currently exists, are transactions in which the price varies from the appraised value by more than 10%, or is an exchange of real (**continued on page 3**)

Background and Policy Issues: (see page 3)

Attachments:

1. Ordinance Amending Palm Beach County Code

Recommended by: _____

County Attorney

Date

11/20/09

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	__0__	__0__	__0__	__0__	__0__
Operating Costs	__0__	__0__	__0__	__0__	__0__
External Revenues	__0__	__0__	__0__	__0__	__0__
Program Income (County)	__0__	__0__	__0__	__0__	__0__
In-Kind Match (County)	__0__	__0__	__0__	__0__	__0__
NET FISCAL IMPACT	__0__	__0__	__0__	__0__	__0__
# ADDITIONAL FTE POSITIONS (Cumulative)	__0__	__0__	__0__	__0__	__0__

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___

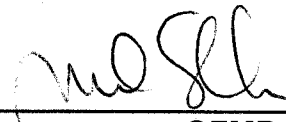

Reporting Category ___

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

 _____ OFMB	11/23/09 SM 11/23/09 MM 11-23-09	 _____ Contract Development and Control	11/23/09
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B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

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

Summary (continued from page 1)

property in which the value of the property to be conveyed or received by County plus any additional consideration to be paid or received by County exceeds \$250,000. Transactions for less than \$250,000, transactions subject to Federal Aviation Administration ("FAA") review or audit other than off airport transactions for non airport purposes, transactions pursuant to the Conservation Lands Protection Ordinance and intergovernmental transactions are excluded from the PRC review requirement.

Countywide (HJF)

Background and Policy Issues

The Palm Beach County Grand Jury recommended that the County Charter be amended to require a supermajority vote to approve any land purchase based upon appraisals using hypothetical assumptions where the purchase price exceeds the assessed value of the property by more than 25%. Staff recommends implementing such policy by amending the PREM Ordinance rather than the County Charter, but recommends requiring approval by supermajority vote of all land purchases (including eminent domain) regardless of appraisal assumptions or purchase price/assessed value variance, as well as requiring approval by supermajority vote of all sales and exchanges of County real property with the exception of internal interdepartmental exchanges and transfers and transactions which do not require separate Board action due to delegation of authority by the Board to County staff. The Grand Jury also recommended re-instituting and formalizing a Land Valuation Committee to review appraisals, assessments, asking and offering prices and the feasibility of condemnation proceedings for all sales, acquisitions and trades. The Grand Jury recommended that such committee be made up of County staff and include or consult with the Property Appraiser's Office. Due to "Sunshine Law" issues, staff recommends that County staff not be committee members, as the Sunshine Laws would prevent County staff from interacting regarding matters which might be presented to the committee, which prohibition would impair County functions. Staff recommends the committee be called the "Property Review Committee" because it will evaluate more than land valuation, and anticipates that its membership will consist of an appointee from the Palm Beach County Property Appraiser's Office, an appointee from the Martin County Property Appraiser's Office, an appointee from the Florida Department of Transportation, a condemnation attorney employed by a governmental agency with offices in Palm Beach County (such as the Palm Beach County School Board or South Florida Water Management Agency) and a land planner from a governmental agency or the school board. Staff envisions that after reviewing a transaction, the PRC will issue a report/recommendation which will be provided to the Board.

The Amendment requires that all purchases (including eminent domain), sales and exchanges of fee simple title to real property which are based upon appraisals utilizing hypothetical conditions, extraordinary assumptions or assuming change of land use, comprehensive plan amendment or concurrency other than that which currently exists or which vary from the fair market value reflected in the appraisal obtained by County (or the average, if more than one) by more than 10%, be presented to the (PRC) for review and evaluation. The Board or the County Administrator will also be able to direct staff to present transactions which do not meet such thresholds and triggers to the PRC for review and evaluation. Excluded from the PRC review requirement are: (i) transactions for less than \$250,000 (in order not to unduly impair County functions); (ii) transactions subject to FAA review or audit (due to the FAA's regulation and oversight of such transactions) other than off airport transactions for a non airport purpose (for

example, an off airport non-aeronautical development such as a shopping center); (iii) transactions pursuant to the Conservation Lands Protection Ordinance (due to such ordinance's requirement that such transactions and proposed compensation be reviewed by the Conservation Lands Acquisition Selection Committee and Natural Areas Management Advisory Committee; (iv) and intergovernmental transactions pursuant to F.S. §125.38 (due to the Board's ability to convey property to another governmental entity for nominal consideration pursuant to such statute).

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ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING THE PALM BEACH COUNTY REAL PROPERTY ACQUISITION, DISPOSITION AND LEASING ORDINANCE, CHAPTER 22, ARTICLE VI OF THE PALM BEACH COUNTY CODE; PROVIDING FOR DEFINITIONS; PROVIDING FOR SUPERMAJORITY VOTE; PROVIDING FOR CREATION OF A PROPERTY REVIEW COMMITTEE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, authorizes counties to adopt ordinances consistent with general and special law to provide for the health, safety and welfare of its citizens; and

WHEREAS, the Board of County Commissioners previously enacted the “Palm Beach County Real Property Acquisition, Disposition and Leasing Ordinance” which is codified at Chapter 22, Article VI of the Palm Beach County Code; and

WHEREAS, the Board of County Commissioners desires to amend such ordinance to add a supermajority vote requirement in certain circumstances and to provide for the creation of a Property Review Committee to review, evaluate and advise the Board regarding certain real estate transactions.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Part 1. Chapter 22, Article VI, Section 22-102, Definitions, is hereby amended to add the following definitions:

Hypothetical Condition means a condition not presently existing but supposed for the purpose of analysis in an appraisal. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends or about the integrity of data used in an appraisal analysis.

Extraordinary Assumption means an assumption, directly related to a specific appraisal, which, if found to be false, could alter the appraiser’s opinions or conclusions.

1 Extraordinary assumptions presume as fact otherwise uncertain information about physical,
2 legal, or economic characteristics of the subject property or about conditions external to the
3 property such as market conditions or trends or about the integrity of data used in an appraisal
4 analysis.

5 **Part 2.** Chapter 22, Article VI, is hereby amended to add a new Section 22-106
6 as follows:

7 **SUPERMAJORITY VOTE.**

8 All purchases (including eminent domain), sales and exchanges of fee simple title to real
9 property (including conveyances for no or nominal consideration) must be approved by a
10 supermajority vote (five commissioners) of the Board. The foregoing supermajority vote
11 requirement will not apply to internal interdepartmental transactions or transactions that do not
12 require separate board action due to a delegation of authority by the Board to County staff prior
13 to January 1, 2010. On or after January, 2010, delegation of authority to staff by the Board
14 relating to purchases, sales and exchanges (including eminent domain and conveyances for no
15 or nominal consideration) must be approved by a supermajority vote of the Board.

16 **Part 3.** Chapter 22, Article VI, is hereby amended to add a new Section 22-107
17 as follows:

18 **PROPERTY REVIEW COMMITTEE.**

19 A. The Board shall create by resolution, within sixty (60) days of the effective date
20 of this Ordinance, a committee to be named the Property Review Committee to review,
21 evaluate and advise the Board regarding real estate transactions involving the purchase
22 (including eminent domain), sale or exchange of fee simple title to real property, which
23 transactions:

- 24 1. Are based on appraisal(s) utilizing Hypothetical Conditions or Extraordinary
25 Assumptions.
- 26 2. Are based upon appraisal(s) assuming a change of land use, a comprehensive
27 plan amendment or concurrency other than that which currently exists.
- 28 3. Involve a purchase in which the purchase price of the real property is greater
29 than one hundred and ten percent (110%) of the fair market value as
30 determined by the appraisal or the average of the appraisals obtained by the
31 County.

1 4. Involve a sale in which the sale price of the real property is lower than
2 ninety percent (90%) of the fair market value as determined by the appraisal
3 or the average of the appraisals obtained by the County.

4 5. Involve an exchange of real property in which the purchase or sale price of
5 the real property to be conveyed to or by the County, plus any additional
6 consideration to be paid to or by the County in the exchange transaction
7 exceeds \$250,000.

8 B. The Board and the County Administrator shall be entitled to direct County staff
9 to present to the Property Review Committee any real property transaction not otherwise
10 required by this Ordinance to be presented to the Property Review Committee.

11 C. The provisions of this section shall not apply to transactions for less than
12 \$250,000, transactions subject to Federal Aviation Administration review or audit with the
13 exception of off-airport transactions for a non airport purpose, transactions pursuant to Chapter
14 11, Article XV of the Palm Beach County Code, the “Conservation Lands Protection
15 Ordinance”, or to any intergovernmental conveyance of real property pursuant to F.S. §125.38,
16 as may be amended.

17 **Part 4. REPEAL OF LAWS AND ORDINANCES IN CONFLICT**
18

19 All local laws and ordinances in conflict with any provision of this Ordinance
20 are hereby repealed to the extent of any such conflict.

21 **Part 5. SEVERABILITY**

22 If any provision, article, paragraph, sentence, clause, phrase, or work of this
23 Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such
24 holding shall not affect the remainder of this Ordinance.

25 **Part 6. INCLUSION IN THE CODE OF LAWS AND ORDINANCES**

26 The provisions of this Ordinance shall become and be made a part of the Code
27 of Laws and Ordinances of Palm Beach County, Florida. The articles and sections of this
28 Ordinance may be renumbered or relettered to accomplish such, and the word “Ordinance” may
29 be changed to “Section”, “Article”, or other appropriate word.

30 **Part 7. EFFECTIVE DATE**

31 The provisions of this Ordinance shall become effective January 1, 2010.

32 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
33 County, Florida, on this the ____ day of _____, 2009.

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SHARON R. BOCK, CLERK

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of

_____, 20__.