

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

Meeting Date: April 6, 2010 Consent Regular
 Public Hearing

Department

Submitted By: County Attorney

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve a settlement as to Parcels 26, 802, 902, in the amount of \$332,467.88 inclusive of attorney's fees and experts' fees and costs, in the eminent domain proceeding entitled Palm Beach County v. Dell's Suburban Market, et al, Case No.: 502008 CA033455XXXMB, for the improvement of West Atlantic Avenue.

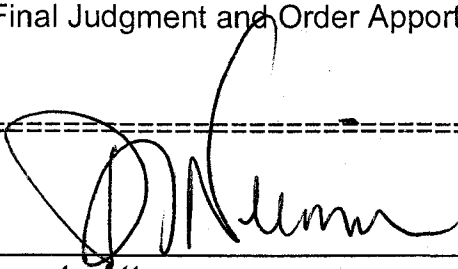
Summary: This action would approve a settlement in an eminent domain proceeding relating to the widening of West Atlantic Avenue from west of Lyons Road to Starkey Road (Project No. 2004602), by paying \$332,467.88 for the property acquired, relocation costs, any and all damages and costs to cure such damages, attorney's fees, experts' fees and costs, and deposit fee of the clerk of the court. Of this sum, \$8,900 would be paid back to Palm Beach County based on a code enforcement lien on the acquired property. District 6 (PM).

Background and Justification: Palm Beach County, under a Joint Participation Agreement with the Florida Department of Transportation (FDOT), is acquiring right-of-way for the construction and improvement of West Atlantic Avenue, from 1,330 feet west of Lyons Road to Starkey Road (Project No. 2004602). This Board action would approve a settlement, by entry into a Final Judgment and Order Apportioning Part of the Compensation to Palm Beach County, as to Parcels 26 (a fee simple taking), 802 (permanent embankment easement), and 902 (temporary construction easement), which parcels have already been acquired for the Project by the quick take procedure, by paying full compensation in the amount of \$260,000 for the property acquired, damages to the remaining property, relocation costs, and any and all other damages and costs to cure any damages, \$47,891 in attorney's fees, and \$24,406.88 in experts' fees and costs, plus \$170 in deposit fees of the clerk of the court.

The parcels are being acquired from a parent tract of property near the northeast corner of Lyons Road and West Atlantic Avenue which has historically been used for restaurant. An appraiser hired by Palm Beach County has opined in an updated appraisal that full compensation for the real property and easements acquired should be \$232,330. The owner has an appraiser who has opined that this compensation should be \$339,000. (Continued on page 3)

Attachments:

1. Budget Availability Statement.
2. Approval of the Proposed Settlement by the Department of Engineering and Public Works.
3. Proposed Stipulated Final Judgment and Order Apportioning Part of the Compensation to Palm Beach County.

Recommended by:  3/25/10
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	\$ 332,468	-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	* \$ 332,468	-0-	-0-	-0-	-0-

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget?

Yes X

No

Budget Account No:

Fund 3500 Dept 361 Unit 1085 Object 6551

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

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

Property and Damages	\$260,000.00
Attorney's Fees	\$ 47,891.00
Expert Fees and Costs	\$ 24,406.88
Fees of the Clerk of the Court	\$ 170.00
Total Settlement	\$332,467.88
Current Deposited Value	<\$155,350.00>
Fiscal Impact	\$177,117.88

***Note:**

1. Eminent domain is exempt from the Inspector General Fee.
- *2. This parcel has a code enforcement lien of \$8,900 which will be deducted from the purchase price and returned to the County's PZ&B department.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

OFMB

Contract Dev. and Control 3/25/10

SD 3/24/10
10M
3-23-10

B. Approved as to Form and 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):

The attorney's fees included in the proposed settlement are calculated mathematically pursuant to Florida law based on the increase in compensation over the amounts originally offered for the property. The initial appraisal for the County and, therefore, the amount of the County's original offer, was in the amount of \$125,700. The initial appraiser selected by FDOT did not include damages in his original appraisal to a building that will have to be demolished based on a 1964 removal agreement between the County and the then owners. Unfortunately, the building on the property is outside of the area described in the removal agreement and damages for the demolition of the building should have been included in the original appraisal. The appraiser hired by the County corrected this omission in an updated appraisal, however, the original offer versus the settlement resulted in a monetary benefit fee of \$44,391. There are additional attorney's fees of \$3,500 for work done in obtaining a prior settlement of business damages (\$50,000), and in apportionment. This fee and the expert fees have been reviewed by professionals in the appropriate fields and found to be reasonable after agreed upon downward adjustments.

Projects on the State Highway System, or projects which use state funding for right-of-way, must comply with either federal laws or state laws relating to right-of-way acquisition procedures. As such, the County was required to follow the procedures of the Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act (Uniform Act) in its acquisition of the needed right-of-way and easements for the Project. The right-of-way acquisition phase of the Project began in earnest in August 2006, when the County received authorization from the FDOT to begin right-of-way activities. Adherence to the Uniform Act, with strict oversight by the FDOT, has resulted in a very time consuming process. All parcels must be settled before the FDOT will certify that the County has complied with the requirements of the Uniform Act. The required FDOT permit for the construction of the Project will not be issued until the FDOT's right-of-way certification is complete.

Staff acknowledges the Property Review Committee (Committee) provision established in the recently adopted Palm Beach County Real Property Acquisition, Disposition and Leasing Ordinance. One aspect of the provision requires the Committee to review, evaluate and advise the Board on real estate transactions when the final agreed on price varies from the appraised value by more than 10%. However, due to the timing and facts of this specific proposed settlement, it is the opinion of the County Attorney's office that this proposed settlement does not need to go to the Committee before coming to the Board of County Commissioner's for approval due to the following: a) this settlement was negotiated in December 2009, prior to the enactment of the County ordinance directing the formation of the Committee; b) while the Committee was created by Resolution adopted by the Board of County Commissioners on February 23, 2010, the Committee has not been staffed yet and no formal appointments have been made or are pending; c) the County has approved Transportation Regional Incentive Program funding in the amount of \$6,286,595 which could be jeopardized if the acquisition process is not timely completed, and based on projections from the Engineering Department of this and other time sensitive matters, waiting for formation of and formal appointments to the Committee could jeopardize these funds; d) timely completion of the right-of-way phase of this project is necessary to obtain the required permits for this project.

A portion of the settlement amount (\$8,900), will be paid back to the County based on a code enforcement lien on the taken property. This payment represents the same proportion (approximately 1/15) of the total amount of the lien, at the time of the taking, as the proportion of the total property taken. This settlement will, in large part, be funded by developers of nearby properties and by the State of Florida, Department of Transportation.

This settlement is cost-effective in light of the closeness of the settlement to the County's appraisal and the savings in expert fees and costs which would be incurred in a trial.

**INTEROFFICE COMMUNICATION
PALM BEACH COUNTY
BUDGET AVAILABILITY STATEMENT**

DATE: March 11, 2010

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

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

RE: W Atlantic/1330' W of Lyons to Starkey
Project # 2004602
Eminent Domain Settlement
Parcels: 026, 802, and 902 \$177,117.88

BOARD MEETING DATE: April 6, 2010

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ 00117 ,

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

Property and Damages	\$260,000.00
Attorney's Fees	\$ 47,891.00
Expert Fees and Costs	\$ 24,406.88
Fees of the Clerk of the Court	\$ 170.00
Total Settlement	<u>\$332,467.88</u>
Current Deposited Value	<u><\$155,350.00></u>
Fiscal Impact	\$177,117.88

This BAS is valid for up to ninety days from its date of issuance.
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Morton Rose

Subject: FW: Settlement Dell's Market
Attachments: Barry S Balmuth.vcf

From: Barry Balmuth [mailto:balmuthlaw@gmail.com] **On Behalf Of** Barry S. Balmuth
Sent: Wednesday, March 10, 2010 5:19 PM
To: Morton Rose
Cc: Kat Chopin
Subject: Settlement Dell's Market

Morton:

Please provide the appropriate signatures below approving of a settlement for the taking of Parcels 26, 802, and 902 (Fee owner: Dell's Suburban Market, Inc.) in the amount of \$260,000 as well as the settlement of attorney's fees and expert fees and costs in the amount of \$72,225.88. Of the first sum, \$8,900 is being paid back to the County based on the code enforcement lien on the taken property. As you know, the O.F.M.B. and its counsel are aware and approve of this arrangement.


The owners appraisal is in the amount of \$339,000. The updated appraisal prepared for Palm Beach County is in the amount of \$232,330. The original appraisal and offer was in the amount of \$125,700. The appraisal increased in large part due to the addition of damages for a demolished building. The appraiser originally did not include such damages in his appraisal because he felt they were waived by virtue of a 1964 removal agreement between the County and the then owners. Unfortunately, the building on the property was outside of the area described in the removal agreement. The low offer versus the settlement resulted in a monetary benefit fee of \$44,391.


This information is provided by way of explanation of the case and settlement. However, the low offer is "water under the bridge." The only relevant numbers in deciding whether the settlement is appropriate are the current appraisals, the settlement amount, and the cost of going to trial. The settlement is much closer to the County's appraisal than the owner's appraisal and, for this reason, and to avoid the fees and costs that would be incurred in a trial, the settlement is recommended.

This also resolves attorney's fees and costs. The monetary benefit attorney's fee was already mentioned. There is also a fee of \$3,500 for time spent by the attorney in presenting a business damage claim of the related lessee/business owner (previously settled for \$50,000) and for apportionment. This fee was reviewed by me and found to be reasonable. The expert fees were reviewed by experts working for the County and found to be reasonable, after agreed to adjustments.

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

Approved by the Department of Engineering and Public Works

By: 
Tanya N. McConnell, P.E.
Deputy County Engineer

and By: 
L. Morton Rose, P.E.
Five Year Road Program Manager

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.:502008CA033455XXXXMB

Petitioner,

v.

DELL'S SUBURBAN MARKET, INC., a
Florida Corporation, RANGELINE GRILL,
INC., A Florida Corporation, FRESH BY
ISABELLA, LLC, a Florida Limited Liability
Corporation, SAMUEL BROWN d/b/a
SAMUEL BROWN TRUCKING, IRISH
ELECTRIC, INC., a Florida Corporation,
DONOVAN G. HEWITT,
INTERNATIONAL CARRIER'S UNION,
INC., a Florida Corporation, TALKIN'
TRASH, INC., a Florida Corporation,
MICHAEL JEFFREY TURNER, and ANNE
M. GANNON, as Palm Beach County Tax
Collector,

PARCELS 26, 802 & 902

Defendants.

STIPULATED FINAL JUDGMENT AND ORDER APPORTIONING
A PART OF COMPENSATION TO PALM BEACH COUNTY

THIS CAUSE having come on to be heard on the Joint Motion of the parties, Petitioner,
PALM BEACH COUNTY, and Defendants, DELL'S SUBURBAN MARKET, INC. and
RANGELINE GRILL, INC., for the entry of this Stipulated Final Judgment and Order Apportioning
A Part of Compensation to Palm Beach County, and the Court, finding that the compensation to be
paid to the Defendants hereunder is full and just, and being otherwise fully advised in the premises,
it is hereby:

ORDERED AND ADJUDGED as follows:

1. Subject to apportionment, if any, amongst the Defendants listed in exhibit "1" attached hereto,¹ Defendants, DELL'S SUBURBAN MARKET, INC., shall have and recover from Petitioner, PALM BEACH COUNTY, the sum of TWO HUNDRED SIXTY THOUSAND DOLLARS AND NO CENTS (\$260,000.00) as full and complete compensation for the takings of Parcel 26 in fee simple, a permanent embankment on property identified as Parcel 802, and a temporary construction easement on property identified as Parcel 902 as well as buildings or portions of buildings, trade fixtures, or other improvements and landscaping within the area of these parcels, damages to the remaining property including, but not limited to, damages to buildings or portions of buildings, trade fixtures, or other improvements, costs to cure any damages, relocation/moving costs, and any and all other damages caused by the taking of Parcels 26, 802, and 902, and for any other claims or counter claims which were brought or could have been brought by Defendants relating to the taking of Parcels 26, 802, and 902 exclusive of attorney's fees and expert fees and costs.

2. The above sum is inclusive of the sum of ONE HUNDRED FIFTY FIVE THOUSAND THREE HUNDRED FIFTY DOLLARS AND NO CENTS (\$155,350.00) previously deposited by Petitioner into the Registry of the Court under the previously entered Order of Taking in this cause. Accordingly, within thirty (30) days of receipt of a certified copy of this judgment,

¹ Defendants, SOUTHEAST FLORIDA PEST CONTROL, INC., BARRY MELMAN, MZ DELIVERY AND MAINTENANCE, INC., MARIO ZAIDAN, CHERYL DOMATO, SCOTT SIDMAN, ROBERT E. PROUT, and SEAHORSE CONTRACTING, INC. executed Disclaimers of Interest in Parcels 206, 802, and 902 and the compensation in this cause and were dropped as parties.

Petitioner, PALM BEACH COUNTY, shall deposit the additional sum of ONE HUNDRED FOUR THOUSAND SIX HUNDRED FIFTY DOLLARS AND NO CENTS (\$104,650.00), representing the difference between the amount previously deposited and the compensation provided for in Paragraph 1, above, into the Registry of the Court and simultaneously pay the Clerk of the Court the fee for making such deposit of \$170.00.

3. Petitioner, PALM BEACH COUNTY, has recorded that Order Imposing Fine/Lien in the Official Records of Palm Beach County beginning at Official Records Book 18803, Page 1576. The recording of this Order Imposing Fine/Lien creates a lien in favor of PALM BEACH COUNTY on the taken property, Parcels 26, 802, and 902, as well as the remaining property. In a separate action, DELL'S SUBURBAN MARKET, INC., has disputed the validity of this lien. Solely to resolve this code enforcement lien as it relates to the taken property, without any effect on the code enforcement lien on the remaining property or other litigation between the parties (other than to reduce the amount of said lien by the payment required herein), DELL'S SUBURBAN MARKET, INC., shall pay to PALM BEACH COUNTY the sum of EIGHT THOUSAND NINE HUNDRED DOLLARS AND NO CENTS (\$8,900.00). This sum is apportioned to PALM BEACH COUNTY. Defendants have withdrawn the sums deposited by Petitioner pursuant to the Order of Taking with the exception of this amount. Accordingly, the Clerk of Court shall disburse the sum of EIGHT THOUSAND NINE HUNDRED DOLLARS AND NO CENTS (\$8,900.00) to Petitioner by making a check for this amount made payable to Palm Beach County and mailing same to Glenn E. Meeder, Jr., Collections Coordinator, O.F.M.B., 301 N. Olive Avenue, 7th Floor, West Palm Beach, Florida

33401.

4. Defendant, DELL'S SUBURBAN MARKET, INC. and RANGELINE GRILL, INC., shall also have and recover from Petitioner, PALM BEACH COUNTY, the sum of FORTY SEVEN THOUSAND EIGHT HUNDRED NINETY ONE DOLLARS AND NO CENTS (\$47,891.00) in attorney's fees and TWENTY FOUR THOUSAND FOUR HUNDRED SIX DOLLARS AND EIGHTY EIGHT CENTS (\$24,406.88) in expert fees and costs. Accordingly, within thirty (30) days of receipt of a certified copy of this judgment, Petitioner, PALM BEACH COUNTY, shall make a check for the total of these sums, in the amount of SEVENTY TWO THOUSAND TWO HUNDRED NINETY SEVEN DOLLARS AND EIGHTY EIGHT CENTS (\$72,297.88), payable to the the Trust Account of Hicks & Schreiber, P.A. and mail same to Robert Schreiber, Esquire, Hicks & Schreiber, P.A., 890 S. Dixie Highway, Coral Gables, FL 33146 for further disbursement.

5. There shall be no further compensation of any kind in this cause, no non-monetary benefit attorney's fees, and no further attorney fees and costs or expert's fees and costs.

6. Title to Parcels 26, 802, 902, which vested in the Petitioner pursuant to the Order of Taking and deposit of money heretofore made, is approved, ratified and confirmed.

7. The Court retains jurisdiction of this action to: (i) enforce the terms of this judgment; and (ii) over any apportionment claims.

8. Judicial labor has not ceased on this matter and, therefore, 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 this _____ day of _____, 2010, in West Palm Beach,
Florida.

JOSEPH MARX
Circuit Judge

Copies to all parties on the attached Service List

**STIPULATION AND JOINT MOTION FOR THE ENTRY OF
STIPULATED FINAL JUDGMENT AND ORDER APPORTIONING
A PART OF COMPENSATION TO PALM BEACH COUNTY**


Comes now the Petitioner, PALM BEACH COUNTY, and the Defendants, DELL'S
SUBURBAN MARKET, INC. and RANGELINE GRILL, INC., and respectfully stipulate to the
entry of the foregoing Stipulated Final Judgment and Order Apportioning A Part of Compensation
to Palm Beach County and jointly move for the entry of same.

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

BARRY S. BALMUTH, P.A.

BARRY S. BALMUTH, ESQUIRE
Florida Bar No. 868991
Outside Counsel for Palm Beach County
1601 Forum Place, Suite 1101
West Palm Beach, Florida 33401
(561) 478-2433 Facsimile
(561) 242-9400 Telephone

HICKS & SCHREIBER, P.A.



ROBERT SCHREIBER, ESQUIRE
Florida Bar No. 727598
Counsel for and Dell'S Suburban Market, Inc.
and Rangeline Grille, Inc.
90 S. Dixie Highway
Coral Gables, FL 33146
(800) 671-2804 Telephone
(305) 663-0219

PALM BEACH COUNTY v DELLS SUBURBAN MARKET, INC., et. al.

Case No. : 502008CA033455XXXXMB

Service List

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PARCELS: 26, 802 & 902

- Defendant:** DELL'S SUBURBAN MARKET, INC., a Florida Corporation
c/o Robert Schreiber, Esquire
Hicks & Schreiber, P.A.
890 S. Dixie Highway
Coral Gables, FL 33146
- Defendant:** RANGELINE GRILL, INC., a Florida Corporation
c/o Robert Schreiber, Esquire
Hicks & Schreiber, P.A.
890 S. Dixie Highway
Coral Gables, FL 33146
- Defendant:** FRESH BY ISABELLA, LLC, a Florida Limited Liability Corporation
Sandra I. Prestia, Registered Agent
4827 Willow Drive
Boca Raton, FL 33487
- Defendant:** SAMUEL BROWN d/b/a SAMUEL BROWN TRUCKING
Samuel Brown
4400 Brandon Drive
Delray Beach, FL 33445
- Defendant:** IRISH ELECTRIC, INC., a Florida Corporation
James W. Irish, Registered Agent
8839 Sonoma Lake Blvd.
Boca Raton, FL 33434
- Defendant:** DONOVAN G. HEWITT and INTERNATIONAL CARRIER'S UNION, INC.,
a Florida Corporation
Donovan Hewitt, Registered Agent
10709 Oak Meadow Lane
Lake Worth, FL 33467
- Defendant:** TALKIN' TRASH, INC., a Florida Corporation
Eric Masse, Registered Agent
9924 Happy Hollow Road
Delray Beach, FL 33446

PALM BEACH COUNTY v DELLS SUBURBAN MARKET, INC., et. al.

Case No. : 502008CA033455XXXXMB

Service List

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Defendant: MICHAEL JEFFREY TURNER
Michael Jeffrey Turner
6541 Sleepy Willow Way
Delray Beach, FL 33484

Defendants: BEEFY PRODUCE, INC., BEEFY TREE FARM, INC., BEEFY U-PICK, INC.,
RICHARD BOWMAN, and TERESA BOWMAN
Theresa A. Bowman, Esquire
14339 Smith Sundry Road.
Delray Beach, Florida 33446

Dana Earle McPherson, Esquire
6850 SW Markel Street
Palm City, Florida 349905121

Defendant : ANNE M. GANNON, as Palm Beach County Tax Collector
c/o Brian Hanlon, Esquire
301 South Olive Avenue, 3rd Floor
West Palm Beach, Florida 33401

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