

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 19, 2010 [X] Consent [] Regular
[] Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

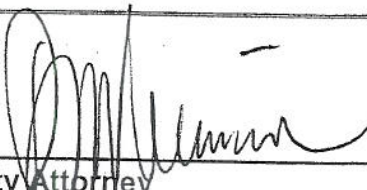
Motion and Title: Staff recommends motion to approve a settlement in the amount of \$100,000, excluding attorney's fees and costs, for the business damage claim of Bedner Growers, Inc., in the eminent domain action styled *Palm Beach County v. Mina J. Taheri, et al.*, Case No. 502010CA008325XXXXMBAO, for the taking of parcels 106 and 706.

Summary: The County has negotiated a settlement in the amount of \$100,000 subject to the approval of the Board of County Commissioners, for the business damage claim of Bedner Growers Inc., exclusive of attorney's fees and costs. Bedner operates a large scale nursery specializing in the wholesale and retail sale of peppers and cucumbers. The business has 675 acres of land under cultivation for this purpose and according to Bedner's Federal Tax Returns, its gross profits were between 6.8 and 8.9 million dollars yearly for tax years 2007-2009. Based on the County's fee simple taking of parcels 106 and 706, Bedner has permanently lost 4 acres of land that was presently being cultivated. Bedner's expert C.P.A. opined that the business damage loss was approximately \$437,000. The proposed settlement negotiated at mediation was \$100,000 for all business damages, excluding attorney's fees and costs. District 5 (PM)

Background and Justification: This was a fee simple taking by the County of approximately 4 acres of land owned by the Taheri Foundation and related Taheri Family interests, collectively ("Taheri"). The business tenant, Bedner Growers, Inc., has leased the subject property from Taheri since the mid 1980's. The parent tract consists of approximately 69.09 acres located at the southeast corner of Smith Sandy Road and Happy Hollow Road in Delray Beach, Florida. The subject taking is necessary for the future expansion and improvement of Lyons Road. (continued on page 3)

Attachments:

- 1. Mediation Settlement Agreement.

Recommended by:  9/29/10
County Attorney Date

Approved by: N/A
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Grant Expenditures	\$100,000	-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	\$100,000	-0-	-0-	-0-	-0-
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No .

Budget Acct No.: Fund 3505 Dept. 361 Unit 1153 Object 6120

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

Road Impact Fees - Zone 5
Lyons Rd/N of West Atlantic to S of Boynton Beach

Negotiated Settlement

Parcels 106 & 706 \$100,000

C. Departmental Fiscal Review: . *Drillhite* _____

III. REVIEW COMMENTS

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

John Paul _____
OFMB *9-30-10* *213210* *10M* *9/30/10*

Dr. J. [Signature] *10/27/10* _____
Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

Philip Magarino _____
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)

Bedner Growers Inc., has operated a successful, large scale farming operation since the mid 1980's, with gross profits ranging from 6.8 million dollars to 8.9 million for tax years 2007–2009, with 8.9 million being attributable to tax year 2009. This taking results in the permanent loss of approximately 4 acres of row crop farmland being used to grow, harvest and sell bell peppers and cucumbers on a wholesale and retail basis. Additionally, it is significant to note that the taking permanently bisects the parent tract, including the subject 4 acres which will result in a permanent increase in the cost to cultivate the crops for sale. As a result of the permanent loss of 4 acres of farmland used to produce revenue and the loss of efficiency and increased costs of production in the future, Bedner's expert C.P.A. determined that the business damages were approximately \$437,000. This does not include attorney's fees and costs.

The County's expert C.P.A. opined that the business damage loss was closer to \$60,000 due to the aggregate method of calculation. Due to the large scale and sophistication of the Bedner's farming operation, Bedner maintains and produced at mediation, sufficient documentation to the County's expert C.P.A. to attribute significant business losses to the subject taking.

Therefore, this proposed settlement of \$100,000 is a significant reduction from the \$437,000 being claimed by Bedner and will eliminate any further risk of loss at trial that would include additional business damages, attorney's fees, and costs. This settlement is recommended for acceptance and is exempt from the County's Amended Real Property Acquisition, Disposition and Leasing Ordinance No. 2009-52, as amended, and does not need to go before the Property Review Committee because it is solely a claim for business damages.

MEDIATION SETTLEMENT AGREEMENT

The parties to this business damage mediation, Petitioner, Palm Beach County, and ~~the Respondent~~, Bedner Growers, Inc., resolve their business damage claim in its entirety as follows:


1. The Petitioner, Palm Beach County, shall pay to ~~the Respondent~~, Bedner Growers, Inc., the sum of \$ 100,000 to resolve all aspects of their ~~business~~ claim in this ^{present} ~~case~~ ^{domain} case, exclusive of attorneys fees and costs.
2. Pursuant to Florida law and the facts of this case, attorneys fees shall be calculated on an hourly basis and the County shall pay such reasonable attorney's fees to Bedner Growers, Inc.'s counsel, MARK Perry, Esq.
3. The County shall also pay Bedner Growers, Inc.'s reasonable costs and report fees, including expert accounting fees, pursuant to Florida law.
4. The business tenant agrees that the sum set forth in paragraph 1 above includes, at their expense, compensation for removal ^{from the} ~~of~~ any and all farming and related ^{County} ~~equipment~~ ^{Row} equipment, items or other material necessary to the operation of their business. This includes any pumps, fuel tank or other such items. The removal of all such material will be completed on or before January 31, 2011.

5. This agreement is subject to the approval of the PBC Board of County Commissioners ~~which~~ and will be placed on the next available agenda for such approval.

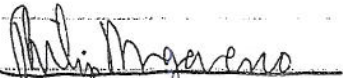
6. Both party was represented by Counsel in this case and appropriate parties were present with settlement authority subject to paragraph 5 above.



L. Monahan Rose, P.E.



Stephen Bidner old/0
Bidner Brown, Inc.



Philip Muzgheno, Esq.
Assistant County Atty.



Mark Perry Esq.

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

P.B. County
Plaintiff(s),

CASE NO.: 2010CA8325 MB

vs.

Mina J. Taheri
Defendant(s).

REPORT OF COURT ORDERED MEDIATION

A mediation conference was held on 9/13/10 for the
above-styled case. Mediator, R. WILLIAM RUTTER, JR., conducted the proceedings.
All parties were present.

 A partial agreement was reached.

✓ A complete agreement was reached.

The following is a synopsis of the partial or complete agreement reached:

see attached

Plaintiff

Defendant

Plaintiff's Attorney

Defendant's Attorney

9/13/10
Date
