

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: January 11, 2011

[X] 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 \$134,583, as to Parcel 819, inclusive of attorney's fees and experts' fees and costs, in the eminent domain proceeding entitled Palm Beach County v. Delray Lakes Estates, Inc. et al, Case No.: 502009CA014184XXXMBAG, for the improvement of West Atlantic Avenue.

Summary: This action would approve a settlement as to the acquisition of one perpetual exclusive easement for canal purposes acquired for the construction and improvement of West Atlantic Avenue, from west of Lyons Road to Starkey Road and a portion of Lyons Road just north of West Atlantic Avenue (Project No. 2004602), by paying \$134,583 for the property acquired, any and all damages and costs to cure such damages, attorney's fees, experts' fees and costs, and deposit fee to the clerk of the court. This project is funded by the Transportation Improvement Fund. District 5 (PM).

Background and Justification: Palm Beach County, under a Joint Participation Agreement with the Florida Department of Transportation, has commenced a project for the construction and improvement of West Atlantic Avenue from 1,330 feet west of Lyons Road to Starkey Road, and Lyons Road from West Atlantic Avenue to a point 400 feet north of West Atlantic Avenue (Project No. 2004602). Parcel 819, a perpetual exclusive easement, was needed for this project. This Board action would approve a settlement by entry into a Final Judgment, as to Parcel 819, by paying full compensation in the amount of \$115,000 for the property acquired, damages to the remaining property, and any and all other damages and costs to cure any damages, \$11,913 in attorney's fees, and \$7,500 in reasonably necessary experts' fees and costs, plus \$170 deposit fee to the clerk of the court.

The principal disagreement between Palm Beach County's and the owner's appraisers is over how much value is taken and remains in the property subject to the perpetual exclusive easement. The owner's appraiser states that the owner can no longer use the land and opines that 99% of the value is taken by the acquisition of the perpetual exclusive easement by County. The County's appraiser states that there is still a lot of value left in the land, because the property could be used to meet the setback requirement before the acquisition and can be used to meet the setback requirement after the acquisition and will also be considered in determining how much can be built on the property based on the allowed density. For these reasons, the County's appraiser opines that the easement takes one-third of the value of the land. The County's appraiser opines that fair compensation to the owner is in the amount of \$78,900 and the owner's appraiser believes it is \$152,700. The \$115,000 settlement amount is a compromise between the two opinions that avoids the additional expert fees and other expenses a trial will necessitate. (continued on page 3)

Attachments:

1. Budget Availability Statement.
2. Mediated Settlement Agreement.
3. Proposed Stipulated Final Judgment Subject to Apportionment.

Recommended by:

County Attorney

12/20/10

Date

Approved by:

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	20013	2014	2015
Capital Expenditures	\$134,583	-0-	-0-	-0-	-0-
Operating Cost	-0-	-0-	-0-	-0-	-0-
External Revenue	-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	\$134,583	-0-	-0-	-0-	-0-
# ADDITIONAL FTE	-0-	-0-	-0-	-0-	-0-
POSITIONS (Cumulative)	-0-	-0-	-0-	-0-	-0-

Is Item Included in Current Budget? Yes X No

Budget Account No.:

Fund 3500 Dept 361 Unit 1085 Object 6210

Program _____

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

Transportation Improvement Fund

W Atlantic Ave/W of Lyons to E of Fla Turnpike

Perpetual Exclusive Easement,

Damages, and Costs to Cure \$115,000.00

Attorney's Fees \$ 11,913.00

Expert Fees and Costs \$ 7,500.00

Fees of the Clerk of the Court \$ 170.00

Total Settlement \$134,583.00

Current Deposited Value <\$ 78,900.00>

Fiscal Impact \$ 55,683.00

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

OFMB

Contract Dev. 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):

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 by Palm Beach County for the property and business damages. The expert (appraiser fees) were reviewed by the County's appraiser and found to be reasonable. This settlement 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 a right-of-way acquisition for less than \$250,000 dollars.

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

DATE: December 6, 2010

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

COPY: Morton Rose, Manager
Right-of-Way Section

FROM: Alexis T. Willhite, Director
Administrative Services *ATW*

RE: W Atlantic/1330' W of Lyons to Starkey
Project # 2004602
Eminent Domain Settlement
Parcel 819 \$55,683.00

BOARD MEETING DATE: January 11, 2011

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ 00051

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

Perpetual Easement and Damages	\$115,000.00
Attorney's Fees	\$ 11,913.00
Expert Fees and Costs	\$ 7,500.00
Fees of the Clerk of the Court	\$ 170.00
Total Settlement	\$134,583.00
Current Deposited Value	<\$ 78,900.00>
Fiscal Impact	\$ 55,683.00

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

Petitioner,

v.

CASE NO.: 502009CA014184XXXMB
DIVISION: AG

DELRAY LAKES ESTATES, INC., a
Dissolved Florida Corporation,
CAROLYN K. CUNNINGHAM, as
Trustee under the provisions of an
unrecorded Trust Agreement dated the
17th day of January, 2001, PRO
GARDENS, INC., and ANNE M.
GANNON, as Palm Beach County Tax
Collector,

PARCEL 819

Defendants.

MEDIATED SETTLEMENT AGREEMENT BETWEEN
PALM BEACH COUNTY AND CAROLYN K. CUNNINGHAM, TRUSTEE

Palm Beach County ("County") and CAROLYN K. CUNNINGHAM, as Trustee
under the provisions of an unrecorded Trust Agreement dated the 17th day of January, 2001
("Trustee") agree as follows:

1. This mediated settlement agreement ("Agreement") is subject to the
recommendation of any necessary Property Review Committee, approval of the Palm Beach
County Board of County Commissioners or its designees, and entry of a stipulated final judgment
("Judgment") containing the terms set forth herein by the court presiding over the above-styled
action at a hearing with proper notice to all parties.

2. Subject to apportionment to lessees, mortgagees, and any other holders of interest in the subject property, Trustee shall have and recover from Palm Beach County One Hundred Fifteen Thousand Dollars and No Cents (\$115,000.00) as full compensation, inclusive of improvements, fixtures, land, severance damages, including damages to any improvements and fixtures, business damages, and any and all other damages and compensation for claims that were brought or could have been brought, for and relating to the taking of Parcel 819 (with the exception of any relocation expenses recoverable under the Uniform Relocation Act the recovery of which shall be administratively, had outside of this proceeding) exclusive of attorney's fees and costs. Trustee shall also recover from Palm Beach County full and complete attorney's fees of Eleven Thousand Nine Hundred Thirteen Dollars and No Cents (\$11,913.00) and expert fees and costs of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00).

3. The sums referenced in the paragraph 2 of this Agreement are inclusive of all sums deposited for Parcel 819 under the Order of Taking. Palm Beach County shall only be required to deposit in the registry of the court the difference between the sums referenced in paragraph 2 and the amounts previously deposited. Notwithstanding this provision, payments for attorney's fees and expert fees and costs shall be made directly to counsel for Trustee for further disbursement. The sums shall be deposited and disbursed within thirty (30) days of the entry of a judgment.

4. Except as provided in paragraph 5 herein, there shall be no further compensation of any kind including attorney's fees and expert fees and costs in this proceeding and no non-monetary benefit fees.

5. This Agreement is based on the relocation of the L-34 Canal being built on Parcel 819 in material conformance with the construction plans as they currently exist, including provisions for drainage. If the project is built in Parcel 819 in a way which materially differs from these plans and said material deviation from the plans negatively affects the value of the remaining property, Trustee shall have the right to reopen the above-style action or file a new action to seek additional compensation. This provision shall not give Trustee the right to seek equitable relief to compel Palm Beach County to build the project in any particular manner. Rather, additional compensation shall be Trustee's only remedy in the event the L-34 Canal relocation is built in a way which materially differs from these plans and said change negatively affects the value of the remaining property shall be as provided above.

6. County shall have the right to assign the title it acquired to Parcels 819 to the Lake Worth Drainage District and/or State of Florida, Department of Transportation. This provision shall run with the land and be binding on Trustee's successors and assigns.

7. Title to Parcel 819, which vested in the Petitioner pursuant to the Order of Taking and deposit of money heretofore made, is approved, ratified and confirmed.

8. Trustee may remove any potted plants only within the area of parcel 819 within thirty (30) days of the entry of the Judgment referenced herein. Thereafter, County may dispose of said potted plants.

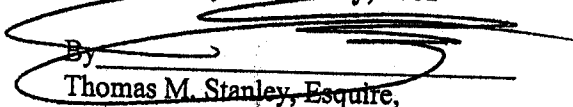
9. The County Engineering Department acknowledges that the size of the Parent Tract remains approximately ten (10 acres).

10. The terms of this Agreement are fully set forth herein. Any other agreements or representations shall be merged herein. If this Agreement is recommended (as necessary) and approved as set forth in paragraph 1, the parties shall stipulate to, and jointly move for, the entry of a Judgment which shall contain all of the terms set forth herein except those of paragraphs 1 and 9.

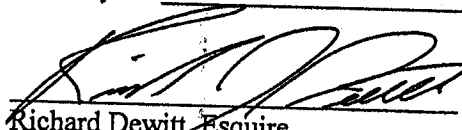
11. All persons signing this Agreement represent by their signature that they have read and understand this Agreement and have authority to execute it.

Dated this 20th day of September, 2010.


CAROLYN K. CUNNINGHAM,
as Trustee under the provisions of an
unrecorded Trust Agreement dated
the 17th day of January, 2001

By 
Thomas M. Stanley, Esquire,
authorized agent

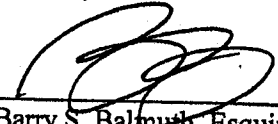
Attorney for


Richard Dewitt, Esquire

PALM BEACH COUNTY

By 
L. Morton Rose, P.E.
as its 5-Year Road Program Manager

Attorney for Palm Beach County


Barry S. Balmuth, Esquire

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,

Petitioner,

v.

CASE NO.:502009CA014184XXXMB
DIVISION: AG

DELRAY LAKES ESTATES, INC., a
Dissolved Florida Corporation,
CAROLYN K. CUNNINGHAM, as
Trustee under the provisions of an
unrecorded Trust Agreement dated the
17th day of January 2001, PRO GARDENS,
INC., and ANNE M. GANNON, as Palm
Beach County Tax Collector,

PARCEL 819

Defendants.

STIPULATED FINAL JUDGMENT SUBJECT TO APPORTIONMENT

THIS CAUSE having come on to be heard on the Joint Motion of the parties, Petitioner, PALM BEACH COUNTY ("COUNTY"), and Defendant, CAROLYN K. CUNNINGHAM, as Trustee under the provisions of an unrecorded Trust Agreement dated the 17th day of January 2001 ("CUNNINGHAM"), for the entry of this judgment, and the Court, finding that the compensation to be paid to the Defendants is full and just, and otherwise being fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED as follows:

1. This is an eminent domain proceeding wherein, pursuant to that Uncontested Order of Taking and deposit of monies thereunder, COUNTY acquired a Perpetual Exclusive Easement to provide an unencumbered right-of-way for use as a canal and canal related purposes as more-fully described in the Uncontested Order of Taking on the property identified as Parcel 819. Prior to such

acquisition, Defendant, CUNNINGHAM was the fee simple owner of Parcel 819.

2. Subject to the rights of any and all holders of interest in the property to apportionment, CUNNINGHAM shall have and recover from COUNTY the sum of **ONE HUNDRED FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$115,000.00)** as full compensation for the taking of the Perpetual Exclusive Easement on Parcel 819 and any improvements acquired, damages to the remaining property, including damages to improvements, caused by the taking of Parcel 819, and any and all damages of any kind and costs to cure any damages, and for any other claims or counter claims which were brought or could have been brought by CUNNINGHAM (with the exception of any relocation expenses recoverable under the Uniform Relocation Act the recovery of which, if any, shall be administratively paid outside of this proceeding) exclusive of attorney's fees and costs but inclusive of any amounts previously deposited in this proceeding.

3. The sum of \$78,900.00 having previously been deposited by Petitioner pursuant to the Order of Taking entered in this cause, within thirty (30) days of receipt of a certified copy of this Final Judgment, Petitioner shall deposit the additional sum of **THIRTY SIX THOUSAND ONE HUNDRED DOLLARS AND NO CENTS (\$36,100.00)** into the registry of the court, represents the difference between the sums previously deposited and full compensation referred to in paragraph 2, above, and also pay to the Clerk of the Court her fee of One Hundred Seventy Dollars and no cents (\$170.00).

4. CUNNINGHAM shall have and recover from COUNTY the sum of **ELEVEN THOUSAND NINE HUNDRED THIRTEEN DOLLARS AND NO CENTS (\$11,913.00)** as full

and complete attorneys fees with the exception only of attorney fee for any apportionment proceedings. There shall be no non-monetary benefit attorney's fees.

5. CUNNINGHAM shall have and recover from COUNTY the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$7,500.00) representing the full and complete expert fees and costs.

6. Within twenty (20) days of receipt of certified copy of this Final Judgment, Petitioner shall make a check in the amount of NINETEEN THOUSAND FOUR HUNDRED THIRTEEN DOLLARS AND NO CENTS (\$19,413.00) payable to the Brigham Moore, LLP Trust Account, representing the above-referenced attorneys fees and expert fees and costs of CUNNINGHAM, and mail same to Richard Dewitt, Esquire, Brigham Moore, LP, 250 S. Australian Avenue, Suite 1601, West Palm Beach, Florida 33401 for further disbursement.

7. There shall be no further compensation in this cause with the sole exception of attorney's fees and costs, if any, incurred in any apportionment proceedings.

8. The Order of Taking as to Parcel 819 entered on June 19, 2009 and recorded in the Public Records of Palm Beach County at ORB 24069, Page 368 is approved, ratified, and confirmed.

9. The compensation awarded herein is based on the relocation of the L-34 canal being built on Parcel 819 in material conformance with the construction plans as they currently exist, including provisions for drainage. If the project is built in Parcel 819 in a way which materially differs from these plans and said material deviation from the plans negatively affects the value of the property and the remaining property, CUNNINGHAM shall have the right to reopen the above-style action or file a new action to seek additional compensation. This provision shall not give

CUNNINGHAM the right to seek equitable relief to compel Palm Beach County to build the project in any particular manner. Rather, additional compensation shall be CUNNINGHAM's only remedy in the event the project is built in a way which materially differs from these plans and said change negatively affects the value of the property and the remaining property shall be as provided above.

10. County shall have the right to assign the title it acquired to Parcels 819 to the Lake Worth Drainage District and/or State of Florida, Department of Transportation. This provision shall run with the land and be binding on CUNNINGHAM's successors and assigns.

11. CUNNINGHAM or designee may remove any potted plants within the area of Parcel 819 within thirty (30) days of the entry of this judgment. Thereafter, Petitioner may dispose of said potted plants.

12. The Court shall retain jurisdiction to enforce the terms of this Final Judgment and over the apportionment of the compensation, if any. As the Court may still have to determine apportionment of any compensation, judicial labor has not ceased on this matter and 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 in West Palm Beach, Palm Beach County, Florida, this ____ day of _____, 20__.

Circuit Judge

Copies to all parties on the attached service list

**STIPULATION AND JOINT MOTION FOR THE ENTRY OF STIPULATED
FINAL JUDGMENT SUBJECT TO APPORTIONMENT**

COMES NOW the Petitioner, PALM BEACH COUNTY, and the Defendant, CUNNINGHAM, by and through their undersigned counsel, respectfully stipulate to the entry of the foregoing Stipulated Final Judgment Subject to Apportionment as to Parcel 819 and move for its entry. Each attorney certifies that he is authorized to execute this motion.

Respectfully submitted,

BARRY S. BALMUTH, P.A.

BARRY S. BALMUTH, ESQUIRE

Florida Bar No.: 868991
Counsel for Palm Beach County
Centurion Tower, Eleventh Floor
1601 Forum Place, Suite 1101
West Palm Beach, Florida 33401
(561) 242-9400 Telephone
(561) 478-2433 Facsimile

BRIGHAM MOORE, LLP


JOHN LITTLE, III, ESQUIRE

Florida Bar No.: 384798
RICHARD DEWITT, ESQUIRE
Florida Bar No.: 879711
250 S. Australian Avenue
Suite 1601
West Palm Beach, Florida 33401
(561) 832-7862 Telephone
(561) 832-7860 Facsimile

*Palm Beach County v.
Delray Lakes Estates, Inc., et al.
Case No.: 502009CA014184XXXMBAG
Page 6*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail
to all parties on the attached service list on this ____ day of _____, 2010.

BARRY S. BALMUTH, Esquire

Service List

Defendant: CAROLYN K. CUNNINGHAM, as Trustee under the provisions of an unrecorded Trust Agreement dated the 17th day of January, 2001
Interest: Fee Owner
Serve: John Little, III, Esquire
Richard Dewitt, Esquire
Brigham Moore, LLP
250 S. Australian Avenue
Suite 1601
West Palm Beach, Florida 33401

Defendant: PRO GARDENS, INC., a Florida Corporation
Interest: Lessee
Serve: James G. Magafas, Registered Agent
720 Eldorado Lane
Delray Beach, FL 33444

Defendant: ANNE M. GANNON, as Palm Beach County Tax Collector
Interest: Taxes
Serve: James Brako, Esquire
301 South Olive Avenue, 3rd Floor
West Palm Beach, Florida 33401