

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: June 5, 2012	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Public Hearing	
Department		
Submitted By: County Attorney's Office		
Submitted For: Planning, Zoning and Building Department		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Settlement Agreement in the appeal styled Plantation Plaza, L.L.C. v. Palm Beach County, Case No. 502011CA001197XXXXMB (Fifteenth Judicial Circuit) and the alternative dispute resolution proceeding styled, In re Case Number C-2010-10250024 & Case Number C-2011-01040016, Petitioner Plantation Plaza, LLC.

Summary: Palm Beach County brought Code Enforcement Cases C-2010-10250024 and C-2011-01040016, against Plantation Plaza, L.L.C., for repeated noise violations arising from the operation of the Plaza's strip mall, located at 2650 S. Military Trail. After hearing the cases, the Code Enforcement Special Magistrate assessed a fine of \$5,000 per day for six days of repeated noise violations and administrative costs in the amount of \$1,390.97.

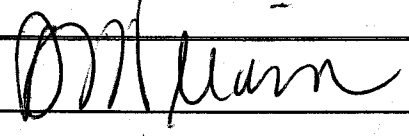
On January 24, 2011, Plantation Plaza, L.L.C., initiated alternative dispute resolution procedures with the County, pursuant to F.S. 70.51(3), contesting the \$31,390.97 fine imposed upon Plantation Plaza, L.L.C., as an unreasonable burden on the subject property. Plantation Plaza, L.L.C. also appealed the Special Magistrate's decision by petition for writ of certiorari in the case styled, Plantation Plaza, L.L.C. v. Palm Beach County, Case No. 502011CA1197XXXXMB.

Both at the code enforcement hearing and in its alternative dispute resolution proceeding, Plantation Plaza, L.L.C., took the position that the noise violations were the fault of its tenant, who the Plaza was in the process of evicting. The Plaza also cited several remedial measures being taken at the property in order to reduce commercial noise, such as foam insulation. While the dispute resolution process and the certiorari appeal were pending, the Town of Palm Springs annexed the property into its jurisdiction. Thereafter, Plantation Plaza L.L.C. offered to settle the alternative dispute resolution proceeding and the certiorari appeal by paying a reduced fine of \$1,000 per day for the six days of violation and the administrative costs of \$1,390.97, totaling \$7,390.97. Under the settlement agreement, each party shall bear their own attorney's fees and costs. District 3 (ATP)

Background and Justification: Palm Beach County brought Code Enforcement Cases C-2010-10250024 and C-2011-01040016, against Plantation Plaza, L.L.C. for repeated noise violations arising from the operation of the Plaza's strip mall, located at 2650 S. Military Trail. The unit at issue was operating as a night club, under the name "Apple Bottoms." The County took the code enforcement citations to hearing. (cont. on p. 3)

Attachments:

- 1. Proposed Settlement Agreement

Recommended By: 	5/18/12
	Date
Approved By: N/A	
	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$7,391)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(\$7,391)	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ☒ No _____

Budget Account No.: Fund 0001 Department 600 Unit 6241 Object 5900

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact: There are minimal costs associated with this settlement. The \$7,391 fine will be recognized in the General Fund by PZ&B Code Enforcement.

C. Departmental Fiscal Review: Pat D'Agostino

III. REVIEW COMMENTS

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

WS 5-21-12
OFMB 5/23/2012
SN 5/21/12
5/21/12
5/21/12
Contract Development and Control
5/24/12

B. Legal Sufficiency:

Amey Taylor Penick
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

Background and Justification (con.):

At hearing, the Special Master concluded that the noise violation was a repeat violation and assessed a fine of \$5,000 per day for each of the six days for which noise violations had been verified by the code enforcement officer. The Special Master also assessed administrative costs of \$1,390.97.

Plantation Plaza appealed the Code Enforcement Special Master's order to the Fifteenth Judicial Circuit sitting in its appellate capacity, in the case styled, Plantation Plaza, L.L.C. v. Palm Beach County, Case No. 502011CA1197XXXXMB. The Plaza also initiated alternative dispute resolution under F.S. §70.51, which provides a process for contesting local government actions that create an unreasonable burden on the use of property.

While the petition for writ of certiorari and the alternative dispute resolution process were pending, the property was voluntarily annexed by the Town of Palm Springs; thus, the property is no longer within the County's code enforcement jurisdiction. The only remaining issue in dispute between the parties is the outstanding fine of \$31,390.97. Plantation Plaza, L.L.C., has offered to settle the fine for \$7,390.97, which represents \$1,000 per day for the six days of violation and administrative costs of \$1,390.97.

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

Plantation Plaza, L.L.C.,

Petitioner,

v.

Case No.: 502011CA001197XXXXMB
Appellate Division

Palm Beach County,

Respondent,

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of January, 2012, by and between PALM BEACH COUNTY (the "COUNTY"), a political subdivision of the State of Florida, and Petitioner Plantation Plaza, L.L.C.

WHEREAS, the County is a charter county and political subdivision of the State of Florida having jurisdiction over code violations in unincorporated Palm Beach County; and

WHEREAS, Petitioner Plantation Plaza, L.L.C., is the owner of commercial property located at 2650 S. Military Trail in Palm Beach County; and

WHEREAS, the County brought code enforcement actions against Petitioner Plantation Plaza, L.L.C., for violations of the County's noise ordinance in cases numbered C-2010-10250024 and C-2011-01040016;

WHEREAS, after hearing cases C-2010-10250024 and C-2011-01040016, Code Enforcement Special Master Earl K. Mallory found Plantation Plaza to have committed a repeat violation of the County's noise ordinances, and assessed an amount of \$31,390.97 in fines and costs, representing a fine of \$5,000 per day for six days of continued violation, and \$1,390.97 in administrative codes; and

WHEREAS, Plantation Plaza filed a Petition for Writ of Certiorari in the Fifteenth Judicial Circuit, in the case styled Plantation Plaza, L.L.C. v. Palm Beach County, Case No. 502011CA001197XXXXMB (Fifteenth Judicial Circuit) on January 25, 2011, challenging the propriety of the Special Master's decision; and

WHEREAS, Plantation Plaza, L.L.C., also filed a Request for Relief pursuant to Section 70.51(3), Florida Statutes, on March 4, 2011, seeking relief from the fines, which Plantation Plaza, L.L.C., contends is an unreasonable burden on the subject property; and

WHEREAS, Plantation Plaza, L.L.C.'s property was subsequently annexed into the Town of Palm Springs; and

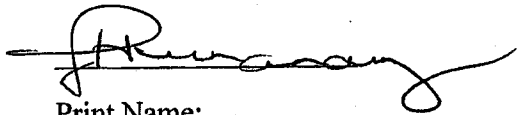
WHEREAS, the parties hereto wish to amicably resolve the Request for Relief without further litigation of the claims made and defenses raised therein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:


1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The COUNTY shall accept a reduced payment of \$7,390.97 as an accord and satisfaction of the fines and costs assessed in case numbers C-2010-10250024 and C-2011-01040016.
3. Plantation Plaza, L.L.C., shall pay the amount of \$7,390.97 to the County within twenty days of execution of this Agreement, and shall dismiss with prejudice its Petition for Relief brought pursuant to Section 70.51(3), Florida Statutes and its Petition for Writ of Certiorari, in the case styled Plantation Plaza, L.L.C. v. Palm Beach County, Case No. 502011CA001197XXXXMB (Fifteenth Judicial Circuit, Jan. 25, 2011) within twenty days of execution of this Agreement.
4. This Settlement Agreement does not constitute an admission of liability by any party. Nothing in this Settlement Agreement excuses, resolves, or addresses any code enforcement violations other than the specific violations raised in code enforcement case numbers C-2010-10250024 and C-2011-01040016.
5. Plantation Plaza, L.L.C., declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims they may have against the COUNTY.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.

WITNESS:


Print Name:

PLAINITFF:


Plantation Plaza, L.L.C.

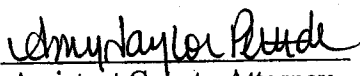
WITNESS:

ON BEHALF OF RESPONDENT
PALM BEACH COUNTY:

Print Name:

Chairperson
Palm Beach County Board of County
Commissioners

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

PLANTATION PLAZA, LLC
C/O FELDMAN & ASSOCIATES
2750 NE 185th STREET, SUITE 303
AVENTURA, FL 33180
(305) 534-4721

BANK OF AMERICA, N.A.

0515

63-27/631
DATE

2/1/2012
AMOUNT

**7,390.97

PAY
Palm Beach County

Seven Thousand Three Hundred Ninety and 97/100*****

TO THE
ORDER
OF

Noise Fines

VOID AFTER 90 DAYS

SAFEGUARD SECURE
SAFEGUARD SECURE

Details on back

Security Features Included

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE DISAPPEARS WITH HEAT.

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Will get
new check
Since this
one is void
now