

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

Meeting Date: August 13, 2013 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 \$254,000, including attorney's fees and costs of the property owner and the damage portion of the lessee's claim, in the eminent domain action styled Palm Beach County v. Ascot AG Land, LLC., Case No. 502012CA003652XXXXMB, for the taking of parcel 113, owned by Ascot AG Land, LLC.

Summary: This case involves the condemnation of a single parcel of land, parcel 113, in Delray Beach, Florida, owned by Ascot AG Land, LLC ("Ascot"). A large portion of this parcel was leased to Robert Howard for use as a nursery. Subject to the County's resolution of the damage claims of Robert Howard, Ascot has accepted the County's initial good faith offer in the amount of \$182,000, plus \$10,000 for attorney's fees that are included in this settlement. This settlement includes and limits Robert Howard's damages to \$62,000. If this settlement in the amount of \$254,000 is approved, it would resolve the outstanding claims, including costs and attorney's fees of the property owner, Ascot, and the damage portion of Robert Howard's claim. If this settlement is approved, the only claims that would remain open are Robert Howard's claims for attorney's fees and costs that are being contested by the County. District 5 (PM)

Background and Justification: Ascot was reflected as the sole owner of parcel 113 on the County's 2012 Ad Valorem Tax Rolls. In a separate lawsuit styled Robert Howard v. Ascot AG Land, LLC, Atlantic TMD, LLC, and Whitworth Estates PUD, LLC., Case No. 502008CA034849XXXXMB, Robert Howard was contesting Ascot's ownership of parcel 113. The County had no knowledge of this separate pending lawsuit between Ascot and Robert Howard. After a jury trial in this separate lawsuit, Ascot was determined to be the sole owner of parcel 113. Robert Howard did retain a separate leasehold of a large portion of parcel 113, for which he is claiming possible business and property related damages. If this settlement is not approved by the County, Ascot and Robert Howard will have any remaining claims determined either at a jury trial, apportionment hearing or both. (continued on page 3)

Attachment:

1. Proposed Stipulated Final Judgment.
2. Budget Availability Statement

Recommended by: _____

County Attorney

8/1/13

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	<u>\$254,170</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>\$254,170</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No

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

Recommended Sources of Funds/Summary of Fiscal Impact:

Road Impact Fee Zone 5
Lyons Rd/W Atlantic to S of Boynton Beach Blvd.

Previously paid or deposited with Clerk of Courts

Parcel 113	\$182,000
Attorney's Fees	\$ 7,500
Court Filing Fee	\$ 170
<u>Spent to date</u>	<u>\$189,670</u>

Additional Costs

Attorney's Fees	\$ 2,500
Damages	\$ 62,000
<u>Total Fiscal Impact</u>	<u>\$254,170</u>

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

OFMB *8/16/13*
8/15/13

Contract Dev. and Control
8-7-13

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):

This would expose the County to significantly higher damages and the County would be solely responsible for the payment of additional fees and costs incurred in these hearings. Robert Howard is asserting damage claims in excess of \$100,000, plus fees and costs of approximately \$50,000, for a total of approximately \$150,000 should the case proceed in court. In an effort to avoid protracted litigation for which the County will solely bear all costs for the parties, Robert Howard will accept \$62,000 as and for all remaining damage claims he may have and is included in the settlement of \$254,000. The County is contesting Robert Howard's attorney's fees and costs, so only this issue will remain open to be determined by the court. Absent full settlement as set forth herein, the case will proceed to a jury trial and the County's exposure will meet or exceed \$500,000. Therefore, staff recommends approval of this settlement.

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: 502012CA003652XXXXMB(AO)

Petitioner,

PARCEL: 113

v.

ASCOT AG LAND, LLC, et. al.,

Respondents.

**STIPULATED FINAL JUDGMENT AS TO PARCEL 113 OWNED BY ASCOT
AG LAND, LLC, WITH DIRECTIONS FOR DISBURSEMENT BY THE CLERK**

THIS CAUSE having come before the Court on the Joint Motion by Petitioner, **Palm Beach County**, by and through its undersigned Senior Assistant County Attorney, Philip Mugavero, Esq., and S. William Moore, Esq., Attorney for the Respondent, **Ascot AG Land, LLC**, and Allan M. Rubin, Esq., Attorney for the Lessee, **Robert D. Howard**, and the Court being fully advised in the premises, hereby finds and decides as follows:

1. The Court has jurisdiction over the subject matter of, and the parties to this cause.
2. Respondent, Ascot AG Land, LLC, shall have and recover the sum of **ONE HUNDRED EIGHTY-TWO THOUSAND DOLLARS AND 00/100 CENTS (\$182,000.00)**, as full, just and final compensation for the taking of Parcel 113, which includes all damages of any type whatsoever, excluding attorney's fees, and expert fees and costs. This sum is an exclusive award to Ascot AG Land, LLC, and no party hereto shall make any further claim to these funds.
3. The sum of **ONE HUNDRED EIGHTY-TWO THOUSAND DOLLARS AND 00/100 CENTS (\$182,000.00)** has been previously deposited by Petitioner into the Registry of the Court pursuant to the Order of Taking entered on May 1, 2012 and shall be immediately disbursed by the Clerk of the Court by check made payable to the **Moore, Bowman & Rix, P.A. Trust Account**, and

mail same c/o S. William Moore, Esq., 3277 Fruitville Road, Unit E, Sarasota, Florida, 34237, who shall be responsible to make the appropriate disbursements.

4. Respondent's counsel, S. William Moore, Esq., shall also have and recover from the Petitioner, Palm Beach County, attorney's fees in the amount of \$2,500.00. Accordingly, Petitioner shall within twenty days (20) days from the date of the entry of this Stipulated Final Judgment, issue a check in the amount of **TWO THOUSAND FIVE HUNDRED DOLLARS AND 00/100 CENTS (\$2,500.00)**, made payable to **Moore, Bowman & Rix, P.A. Trust Account**, and mail same c/o S. William Moore, Esq., 3277 Fruitville Road, Unit E, Sarasota, Florida, 34237.

5. Title to Parcel 113, as further described in **Exhibit "A"** attached hereto, which vested in the Petitioner pursuant to the Order of Taking and the deposit previously made is hereby approved, ratified and confirmed.

6. The sum paid to the Respondent, **Ascot AG Land, LLC**, represents full and final compensation for the taking of Parcel 113, and the Respondent will not seek any further monies from the Petitioner in this cause, except as specifically set forth herein.

7. Additionally, the Respondent, **Robert D. Howard**, shall recover from the Petitioner, Palm Beach County, damages in the amount of \$62,000, exclusive of attorney's fees and expert fees and costs. Accordingly, Petitioner shall within twenty days (20) days from the date of the entry of this Stipulated Final Judgment, issue a check in the amount of **SIXTY-TWO THOUSAND DOLLARS AND 00/100 CENTS (\$62,000.00)**, made payable to **Shutts & Bowen, LLC, Trust Account**, and mail same c/o Allan M. Rubin, Esq., 200 East Broward Blvd., Suite 2100, Ft. Lauderdale, Florida, 33301, who shall be responsible to make the appropriate disbursements. This sum is an exclusive award to Robert D. Howard and no party hereto shall make any further claim to these funds.

8. The Court specifically reserves jurisdiction to award attorney's fees, expert fees and costs to Robert D. Howard, and enter any supplemental orders related to this matter.

DONE AND ORDERED in chambers this ____ day of August, 2013 in West Palm Beach, Palm Beach County, Florida.

Honorable Catherine M. Brunson
Circuit Judge

JOINT MOTION

Petitioner, **Palm Beach County** and S. William Moore, Esquire, Attorney for the Respondent, **Ascot AG Land, LLC**, and Allan M. Rubin, Esq., Attorney for the Lessee, **Robert D. Howard**, hereby stipulate that they have resolved this case as described above, and move this Court for entry of the foregoing Stipulated Final Judgment.

PHILIP MUGAVERO, ESQ.
Sr. Assistant County Attorney
Palm Beach County Attorney's Office
300 N. Dixie Hwy., Suite 359
West Palm Beach, FL 33401
E-mail: pmugaver@pbcgov.org

S. WILLIAM MOORE, ESQ.
Moore, Bowman & Rix, P.A.
3277 Fruitville Road, Unit E
Sarasota, FL 34237
E-Mail: bmoore@mbrfirm.com

By: Philip Mugavero, Esq.
Fla. Bar No. 931179

By: S. William Moore, Esq.
Fla. Bar No. 157268

ALLAN M. RUBIN, ESQ.
Shutts & Bowen, LLC
200 East Broward Blvd., Suite 2100
Ft. Lauderdale, FL 33301
E-mail: ARubin@shutts.com

By: Allan M. Rubin, Esq.
Fla. Bar No. 138915

Copies shall be furnished to all the above parties.

EXHIBIT "A"

TRACT "E", DELRAY MARKETPLACE PRESERVE 1, PLAT BOOK 111, PAGES 98-99, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID PARCEL CONTAINS 124,523 SQUARE FEET OR 2.8587 ACRES MORE OR LESS.

BEING SUBJECT TO ANY/ALL EASEMENTS, RESERVATIONS, DEDICATIONS OR RESTRICTIONS.

NOTE: THE ENCUMBRANCES ASSOCIATED WITH TRACT "E" ARE AS FOLLOWS PER THE PARENT PLAT: "TRACT "E", AS SHOWN HEREON, IS HEREBY RESERVED FOR ASCOT AG LAND, LLC, THEIR SUCCESSORS, ASSIGNS AND LEASEHOLDERS, FOR FUTURE LYONS ROAD RIGHT OF WAY ACQUISITION PURPOSES BY PALM BEACH COUNTY AND IS THE PERPETUAL MAINTENANCE OBLIGATION OF SAID OWNER, THEIR SUCCESSORS, ASSIGNS AND LEASEHOLDERS, TRACT "E", AS SHOWN HEREON, IS SUBJECT TO THE RESTRICTIONS SET FORTH IN OFFICIAL RECORDS BOOK 21979, PAGE 1078 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, IN FAVOR OF LAKE WORTH DRAINAGE DISTRICT."

LEGEND

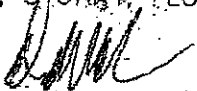
- L.A.E. = LIMITED ACCESS EASEMENT
- LWDD = LAKE WORTH DRAINAGE DISTRICT
- O.R.B. = OFFICIAL RECORDS BOOK
- R/W = RIGHT OF WAY
- STA = STATION
- U.E. = UTILITY EASEMENT

BEARING BASE;

BEARINGS SHOWN HEREON ARE REFERENCED TO STATE PLANE COORDINATES, NORTH AMERICAN DATUM OF 1983/1990 ADJUSTED, FLORIDA EAST ZONE, REFERENCE A BEARING OF SOUTH 01°03'00" EAST ALONG THE EAST LIMITS OF THE PLAT OF DELRAY MARKETPLACE PRESERVE 1, PLAT BOOK 111, PAGES 98-99, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

NO SEARCH OF THE PUBLIC RECORDS WAS MADE BY THE SIGNING SURVEYOR.

THIS INSTRUMENT WAS PREPARED BY DAVID JOSEPH WICHSER, P.S.M., IN THE OFFICE OF BETSY LINDSAY INC., SURVEYING & MAPPING, 7997 S.W. JACK JAMES DRIVE, STUART, FLORIDA, 34997.



DAVID JOSEPH WICHSER, P.S.M.
FLORIDA CERTIFICATE NO. 5565

10/14/10
DATE

NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

PROJECT NO. 2005503	SHEET 1	OF 2	PROJECT: PARCEL 113 LYONS ROAD ADDITIONAL ROAD RIGHT OF WAY	SCALE: APPROVED: D.J.W. DRAWN: D.J.W. CHECKED: D.J.W. DATE: 10/24/10 FIELD BOOK NO.	REVISION BY DATE	B BETSY LINDSAY, INC. SURVEYING AND MAPPING 7997 S.W. JACK JAMES DRIVE STUART, FLORIDA 34997 (772)286-5753 (772)286-5933 LICENSED BUSINESS NO. 6
DESIGN FILE NAME: Parcel 113 Lyons Rd DRAWING NO.: Parcel 113						

EXHIBIT
 A

BLOCK 7
EXISTING 30' ROAD EASEMENT
PER PLAT BOOK 2, PAGES 26-28

BLOCK 8
THE PALM BEACH FARMS
CO. PLAT NO. 1

PLAT BOOK 2, PAGES 26-28,
PUBLIC RECORDS OF PALM BEACH
COUNTY, FLORIDA

S. LINE SECTION
7-46-42
N. LINE SECTION
18-46-42
126
EXISTING 30'
ROAD EASEMENT
PER PLAT BOOK 2,
PAGES 26-28
15'

E. LINE SECTION
7-46-42
W. LINE SECTION
8-46-42
10' FPL EASEMENT
O.R.B. 12956, PAGE 850
127 128
38.28' LWDD
R/W PER
O.R.B. 6495,
PAGE 761

113 114 115
29.64'
LWDD R/W
O.R.B. 16600,
PAGE 199
30.36'
LWDD R/W
O.R.B. 6495,
PAGE 761

41.72' LWDD EASEMENT
LATERAL CANAL NO. 32
PER O.R.B. 21979,
PAGE 1078
20' INGRESS/EGRESS
EASEMENT
O.R.B. 7281, PAGE 1592
3

THE PALM BEACH
FARMS
CO. PLAT NO. 1
PLAT BOOK 2, PAGES 26-28,
PUBLIC RECORDS OF PALM BEACH
COUNTY, FLORIDA
15'

BLOCK 18

E. LINE SECTION
18-46-42
W. LINE SECTION
17-46-42

DELRAY MARKETPLACE
PRESERVE 1
PLAT BOOK 111, PAGES 98-99,
PUBLIC RECORDS OF PALM BEACH
COUNTY, FLORIDA

TRACT "A"
N89°02'20"E
95.00'
TRACT "B"
S89°04'38"W
95.00'
TRACT "D"
N01°03'00"W 1310.74'

PARCEL 113
124,523 SQUARE FEET
OR 2.8587 ACRES

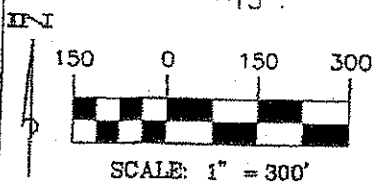
49.64' LWDD R/W
C.R.B. 20339, PAGE 335

TRACT "C"
S01°03'00"E 1310.80'
(REFERENCE BEARING)

ASCOT-LYONS &
ATLANTIC PUD
PRESERVE PARCEL 6
PLAT BOOK 110, PAGES 75-77,
PUBLIC RECORDS OF PALM
BEACH COUNTY, FLORIDA

S. LINE SECTION
8-46-42
N. LINE SECTION
17-46-42

100' RURAL PARKWAY
PER O.R.B. 21699, PAGE 11895
5' L.A.E. PER
PLAT BOOK 110, PAGES 75-77
10' U.E. PER
PLAT BOOK 110, PAGES 75-77



EXISTING 30'
ROAD EASEMENT
PER PLAT BOOK 2
PAGES 26-28
34 33

48 47
BLOCK 17
THE PALM BEACH FARMS
CO. PLAT NO. 1
PLAT BOOK 2, PAGES 26-28,
PUBLIC RECORDS OF PALM BEACH
COUNTY, FLORIDA

THIS IS NOT
A SURVEY

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

DATE: August 5, 2013

TO: Phil Mugavero
County Attorney's Office

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

RE: Lyons Rd/N of West Atlantic to S of Boynton Beach
Project # 2005503
Right of Way
Eminent Domain Settlement \$254,170.00

BOARD MEETING DATE: August 13, 2013

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

FUNDING STATUS: FULLY FUNDED

Is Item Included in Current Budget? Yes X No

Budget Account No:

Fund 3505 Dept 361 Unit 1153 Object 6120

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

Previously paid or deposited with Clerk of Courts	
Parcel 113	\$182,000
Attorney's Fees	\$ 7,500
Court Filing Fee	\$ 170
<u>Spent to date</u>	<u>\$189,670</u>

Additional Costs

Attorney's Fees	\$ 2,500
Damages	\$ 62,000
<u>Total Fiscal Impact</u>	<u>\$254,170</u>

This BAS is valid for up to ninety days from its date of issuance.
F:\ADM_SER\WP50\BAS\bas13\Lyons.row.doc