# PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date: Department	June 7, 2016	[X] Consent [ ] Public Hearing	
Submitted By:	COUNTY ATTORNEY		
Submitted For:	ENGINEERING & PUBLIC	C WORKS	

#### I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve**: the Stipulated Order of Taking and Final Judgment as to Parcel 200 in the eminent domain case of <u>Palm Beach County v. Seacoast National Bank, N.A., et al.</u>, Case No.: 502015CA009287XXXXMB, for settlement in the amount of \$372,423.00, excluding attorney's fees and costs.

**Summary**: This case involves the condemnation of parcel 200, owned by Seacoast National Bank, N.A., to acquire a permanent drainage easement necessary for the road construction and improvements of Old Dixie Highway, from Park Avenue North to Northlake Boulevard, in Palm Beach County. The property owner's initial counter offer claim based on its appraisal for the property taken, including severance damages and cost to cure was \$575,000. To reduce the property owner's damage claim, the County Engineering Department agreed to certain concessions in the parcel taken. As a result, the property owner's appraisal was revised downward to \$372,423. The County's appraiser concurred with the amount of the property owner's revised appraisal. This settlement includes all damages and costs to cure, but excludes attorney's fees and reasonable expert costs that will be calculated pursuant to Florida law. <u>District 1</u> (PM)

Background and Justification: This is an eminent domain action brought by Palm Beach County for the necessary road construction and improvements of Old Dixie Highway, from Park Avenue North to Northlake Boulevard. The County's appraisal and offer for the property was \$257,000. The property owner's initial counter offer claim based on its appraisal was \$575,000. The County Engineering Department was able to negotiate shared use of the area taken. As a result, the property owner's revised claim for the property taken, including severance damages and cost to cure, was reduced to \$372,423. The County's appraiser concurs with this reduced settlement amount of \$372,423, exclusive of attorney's fees and reasonable expert costs that will be calculated in accordance with Florida law.

#### Attachments:

<ol> <li>Budget Availability Statement.</li> <li>Stipulated Order of Taking and Final Judgment As To Parcel 200.</li> </ol>			
Recommended by:	Milliam	6/1/16	
	County Attorney	Date	

## II. FISCAL IMPACT ANALYSIS

#### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	\$372,423	0-	0-	-0-	-0-
Operating Costs		-0-	-0-	-0-	-0-
<b>External Revenues</b>	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	\$372,423	-0-	-0-	-0-	-0-
# ADDITIONAL FTE					
<b>POSITIONS</b> (Cumulative)					

Is Item Included in Current Budget Yes X No

Budget Account No:

Fund 3501 Dept 361 Unit 1064 Object 6120

Recommended Sources of Funds/Summary of Fiscal Impact:

Road Impact Fee Fund - Zone 1 Old Dixie Hwy/Park Ave to Northlake Blvd

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

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.

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

DATE:

May 20, 2016

REVISED

TO:

Tripp D. Cioci, Manager

Right-Of-Way

Attn: Kaye Weichel

FROM:

Alice Kovalainen, Fiscal Manager

Administrative Services

RE:

Old Dixie Hwy/Park Avenue North to Northlake Blvd

Project # 2004506

Parcel 200

Final Judgement Eminent Domain \$372,423.00

BOARD MEETING DATE:

June 7, 2016

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ \_00.232

**FUNDING STATUS:** 

FULLY FUNDED

Is Item Included in Current Budget

X Yes No

Budget Account No:

Fund 3501 Dept 361

Unit 1064

Object 6120

Recommended Sources of Funds/Summary of Fiscal Impact:

Road Impact Fee Fund - Zone 1

Old Dixie Hwy/Park Ave to Northlake Blvd

\$372,423.00 Final Judgement Amount \$257,000.00 Original Estimate \$115,423.00 Additional Fiscal Impact

This BAS is valid for up to ninety days from its date of issuance. F:\ADM\_SER\WP50\BAS\bas16\000232.row rev.doc2.row

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup>
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY FLORIDA

CASE NO.: 502015CA009287XXXXMB(AA)

Parcel 200

PALM BEACH COUNTY,

Petitioner,

vs.

SEACOAST NATIONAL BANK, N.A. et. al.,

Defendants,

STIPULATED ORDER OF TAKING AND FINAL JUDGMENT AS TO PARCEL 200

THIS CAUSE came before the Court on the stipulation and joint motion of the parties, Petitioner, PALM BEACH COUNTY ("Petitioner"), and Defendant, SEACOAST NATIONAL BANK, N.A. ("SEACOAST"), for the entry of this Stipulated Order of Taking and Final Judgment. The Court being fully advised in the premises, it is hereby

#### ORDERED AND ADJUDGED as follows:

- 1. This Court has jurisdiction of the subject matter and the parties to this cause.
- 2. The pleadings in this cause are sufficient, Petitioner is properly exercising its delegated authority in furtherance of a public purpose, and the easement hereby acquired by Petitioner is reasonably necessary for this public purpose.

- 3. Defendant, SEACOAST, shall have and recover from Petitioner the sum of THREE HUNDRED SEVENTY TWO THOUSAND FOUR HUNDRED TWENTY THREE DOLLARS AND NO CENTS (\$372,423.00) as full compensation for the taking of the drainage easement more-fully described herein. There being no other parties with an interest in the subject property named in this action and, because the taking is only of an easement and SEACOAST will continue to own the underlying property and, therefore, there are no taxes due to be paid in this action, the sum is finally apportioned to SEACOAST.
- 4. Within twenty (20) days of the date of this Stipulated Order of Taking and Final Judgment, Petitioner shall make available for pickup by Barry S. Balmuth, Esquire or his designee, a check in the amount of THREE HUNDRED SEVENTY TWO THOUSAND FOUR HUNDRED TWENTY THREE DOLLARS AND NO CENTS (\$372,423.00) made payable to SEACOAST NATIONAL BANK, N.A. Upon making such payment, Petitioner shall notify, in writing, all attorneys of record that the payment has been made and that, upon payment, Petitioner shall be entitled to the drainage easement and non-exclusive possession and use of the land all described more-fully herein without further notice or Order of this Court.
- 5. Upon payment of the above-referenced sum, a permanent drainage easement ("Drainage Easement") on property identified as Parcel 200 and described in the sketch and legal description attached hereto as Exhibit "A" shall vest in the Petitioner. This Drainage Easement is for Petitioner's use in permanently installing and maintaining an underground pipe ("Drainage Pipe") varying in width from 36 to 48 inches as illustrated in the pertinent portion of those construction plans for the Old Dixie Highway project which are attached hereto as Exhibit "B," for the purposes of carrying drainage from Old Dixie Highway. Said Drainage Easement shall be non-exclusive, provided, however, that SEACOAST, and its successors and assigns, shall be

permanently prohibited from removing or interfering with the functioning or maintenance of the Drainage Pipe installed by Petitioner in the area of Parcel 200 and shall be prohibited from constructing any structures over Parcel 200 other than Allowed Uses as described below. Construction related to the Drainage Pipe (the "Project") shall not extend beyond the limits outlined in the legal description of Parcel 200 in Exhibit "A" attached hereto. SEACOAST, its successors and assigns, and utilities serving the remaining property shall be allowed to construct a fence along the southerly border of Parcel 200, and shall be allowed to install a) landscaping, b) pavement for roadway purposes, parking, and property access purposes, and c) utilities including, but not limited, to pipes and cables for utilities, for drainage of the remaining property, and for sewer (collectively, "Allowed Uses") provided these Allowed Uses do not interfere with the functioning or cause damage to the Drainage Pipe installed by Petitioner. However, SEACOAST, its successors and assigns shall be prohibited from installing "underground utilities" within the middle 10 feet of the 30 feet wide Drainage Easement, and shall further coordinate all improvements proposed within the Drainage Easement, with Palm Beach County Engineering Department's, Roadway Production Division. In the event that, when maintaining the Drainage Pipe or otherwise, Petitioner damages, impairs, removes, disturbs, or obstructs, any Allowed Uses constructed by SEACOAST or its successors or assigns, Petitioner shall promptly either repair such damage or pay to SEACOAST or its successors or assigns the cost to repair or cure such damages. Similarly, if, when constructing or maintaining any pavement infrastructure etc., SEACOAST damages the Drainage Pipe installed by Petitioner, it shall, at its election, promptly either repair such damage or pay for the cost of repairing such damage.

6. The Drainage Pipe and the Project shall be constructed in material conformity with the pertinent portion of those construction plans for the Old Dixie Highway project which are

attached hereto as Exhibit "B". In the event the Drainage Pipe is not constructed in material conformity with these plans or there are additional damages resulting to the remaining property, SEACOAST or its successors or assigns shall be entitled to reopen this action to seek these additional damages.

- 7. The compensation awarded under this Stipulated Order of Taking and Final Judgment is based on the assumption that the "lift station easement" ("Lift Station Easement") in favor of Seacoast Utilities and its successors and assigns granted by that plat of 1100 Commerce Park recorded at Plat Book 98, Pages 60-61 in the Official Records of Palm Beach County, Florida will need to be relocated. Accordingly, there will be no further compensation if the taking causes the need for this Lift Station Easement to be relocated.
- 8. The compensation awarded under this Stipulated Order of Taking and Final Judgment is based on the assumption that the use of an easement for utility purposes by virtue of that Easement Deed in favor of Seacoast Utility Authority ("SUA Easement") recorded at Official Records Book 6490, Page 916 in the Official Records of Palm Beach County, Florida will not be hindered or obstructed by the taking of the easement, the construction of the Project therein, or the maintenance of the Drainage Pipe. Accordingly, if the taking of the easement, the construction of the Project therein, or the maintenance of the Drainage Pipe does hinder or obstruct the use of the SUA Easement which results in additional damages to the remaining property, SEACOAST or its successors or assigns shall be entitled to reopen this action to seek these additional damages and any other legal cause of action for relief that may be sought by SEACOAST.
- 9. The court retains jurisdiction to enforce this Stipulated Order of Taking and Final Judgment, to award attorney's fees, expert's fees, and costs to SEACOAST pursuant to Florida law, to consider any additional claims for damages under the conditions described above, and to

enter such other orders as justice requires.

	DONE AND ORDERED i	n West Palm Beach, Palm Beach County, Florida, this
day of	, 2016.	
		RICHARD OFTEDAHL Circuit Judge

copies to:

Barry S. Balmuth, B.C.S.
Barry S. Balmuth, P.A.
The Oaks Center
2505 Burns Road
Palm Beach Gardens, Florida 33410
Email: <a href="mailto:balmuthlaw@alumni.emory.edu">balmuthlaw@alumni.emory.edu</a>
(Attorney for SEACOAST)

Phillip Mugavero
Assistant County Attorney
Palm Beach County Attorney's Office
300 N. Dixie Highway, Suite 359
West Palm Beach, Florida 33401
Email: <a href="mailto:pmugavero@pbcgov.org">pmugavero@pbcgov.org</a>
(Attorney for Petitioner)

# STIPULATION AND JOINT MOTION FOR THE ENTRY OF STIPULATED FINAL JUDGMENT AS TO PARCEL 200

Comes now the Petitioner, PALM BEACH COUNTY, and the Defendant, SEACOAST NATIONAL BANK, N.A., and respectfully stipulate to the entry of the foregoing Stipulated Order of Taking and Final Judgment as to Parcel 200 and move for its entry.

#### BARRY S. BALMUTH, P.A.

PALM BEACH COUNTY ATTORNEY'S OFFICE

/s/ Barry S. Balmuth
BARRY S. BALMUTH, B.C.S.
Counsel for Seacoast Nation Bank, N.A.
The Oaks Center
2505 Burns Road
Palm Beach Gardens, Florida 33410
Email: balmuthlaw@alumni.emory.edu
Telephone: (561) 242-9400

/s/ Phillip Mugavero
PHILLIP MUGAVERO
Assistant County Attorney
Counsel for Petitioner
300 N. Dixie Highway, Suite 359
West Palm Beach, Florida 33401
Email: pmugavero@pbcgov.org
Telephone: (561) 355-2225

#### EXHIBIT "A"

A PORTION OF TRACT "A" AND WATER MANAGEMENT TRACT "B" OF THE PLAT OF 1100 COMMERCE PARK, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 98, PAGES 60 THROUGH 61, INCLUSIVE, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SECTION 20, TOWNSHIP 42 SOUTH, RANGE 43 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 30.00 FEET OF SAID TRACT "A" AND WATER MANAGEMENT TRACT "B".

SAID PARCEL CONTAINS 49,983 SQUARE FEET OR 1.14 ACRES MORE OR LESS.

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

LEGEND
Δ = DELTA (CENTAL) ANGLE
L = LENGTH OF ARC
(M) = FIELD MEASURED BETWEEN FOUND MONUMENTS
(P) = PER PLAT

(P) = PER PLAT P.B. = PLAT BOOK P.B.C. = PALM BEACH COUNTY P.S.M. = PROFFESIONAL SURVEYER & MAPPER

O.R.B. = OFFICIAL RECORDS BOOK
R = RADIUS OF ARC
R/W = RIGHT OF WAY

## SURVEYOR'S NOTES:

SURVEYOR'S NOTES:

1. BEARINGS AS SHOWN HEREON ARE BASED ON STATE PLANE COORDINATES, NORTH AMERICAN DATUM OF 1983/1990 ADJUSTED (N.A.D. 83/90), FLORIDA EAST ZONE, REFERENCE A FIELD MEASURED BEARING OF S88'28'25"E ALONG THE SOUTHERLY LIMITS OF THE PLAT OF 1100 COMMERCE PARK, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 98, PAGES 60 THROUGH 61, PUBLIC RECORDS OF PAIM BEACH COUNTY FLORIDA PALM BEACH COUNTY, FLORIDA.
ALL DISTANCES AS SHOWN HEREON ARE GROUND DISTANCES.
THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 1.00004775.
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.

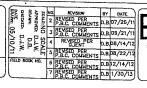
JOSEPH WICHSER, P.S.M.

DAVID FLORIDA CERTIFICATE NO. 5565 2/1/13

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

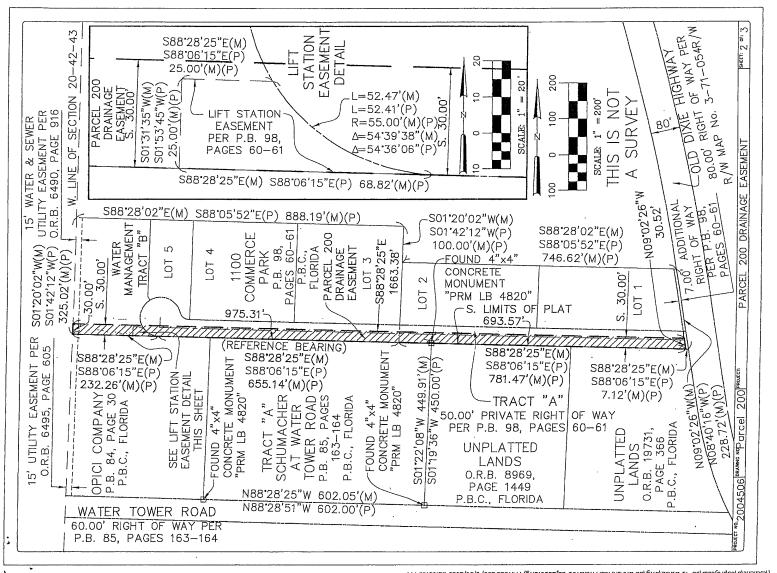
PROJECT: OLD DIXIE HIGHWAY (PARK AVENUE TO NORTHLAKE BOULEVARD) PALM BEACH COUNTY PROJECT NUMBER 2004506



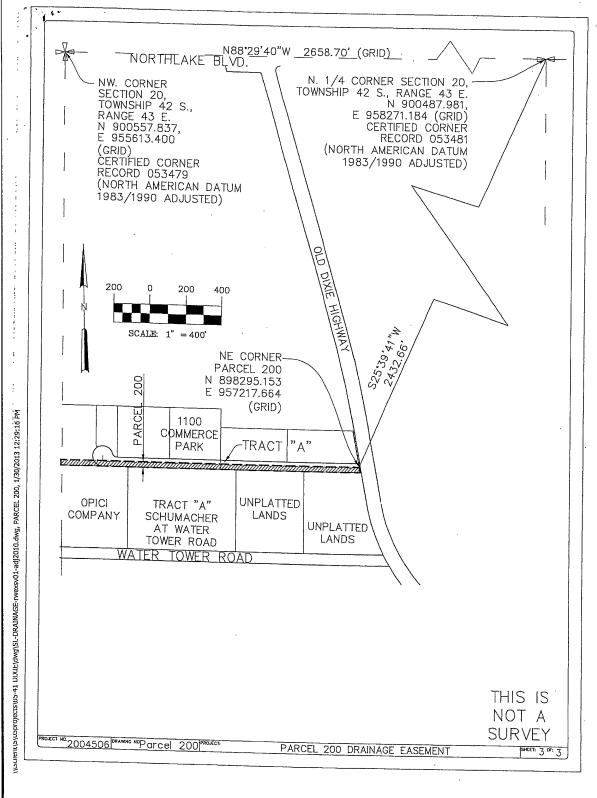


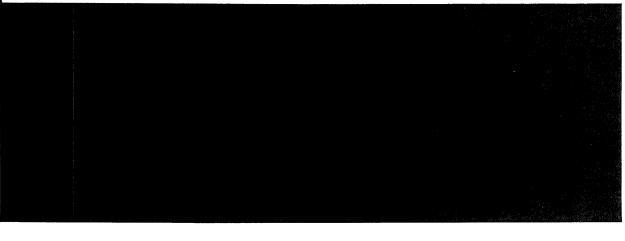
BETSY LINDSAY, INC.

7997 B.W. JACK JAMES DRIVE STUART, FLO (772)286-5753 (772)288-5933 FAX LICENSED BUSINESS NO. 6852









THIS CONTRACT PLAN INCLUDES: ROADWAY CONSTRUCTION PLANS SIGNING AND PAVEMENT MARKINGS PLANS

INDEX OF ROADWAY PLANS

# COUNTY OF PALM BEACH STATE OF FLORIDA

CONSTRUCTION PLANS

FOR

DESCRIPTION SHEET NO. KEY SHEET SUMMARY OF QUANTITIES AND PAY ITEM FOOTNOTES THRU 6 DRAINAGE MAP TYPICAL SECTION GENERAL NOTES PLAN & PROFILE 9 THRU 15 SIDE STREET PROFILES 16 17 THRU 34 DRAINAGE STRUCTURES DRAINAGE DETAILS 35 THRU 36 CROSS SECTIONS 37 THRU 56 DRIVEWAY HALF SECTIONS 57 THRU 68 STORMWATER POLLUTION PREVENTION PLAN 69 AND 70 CTL-1 THRU CTL-5 PROJECT NETWORK CONTROL CTL-6 THRU CTL-8 REFERENCE POINTS ROADWAY SOIL SURVEY T-14 PALM BEACH COUNTY'S TRAFFIC DIVISION ITS COMMUNICATIONS DETAIL

OLD DIXIE HIGHWAY

FROM NORTH OF PARK AVE. TO NORTHLAKE BLVD. BOARD OF COUNTY COMMISSIONERS

PROJECT NO. 2004506

PHASE IV (100% SUBMITTAL) NOT FOR CONSTRUCTION DECEMBER 2013

EXHIBIT B

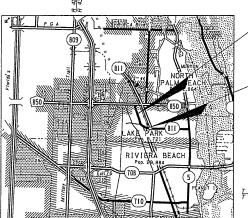
HAL R. VALECHE DISTRICT 1

PAULETTE BURDICK DISTRICT 2 (VICE MAYOR) STEVEN L. ABRAMS DISTRICT 4

SHELLEY VANA DISTRICT 3

> MARY LOU BERGER DISTRICT 5

PRISCILLA A. TAYLOR DISTRICT 7 (MAYOR)



END PROJECT STA. 33+56.14 BEGIN PROJECT

STA, 7+20.00

ATTENTION IS DIRECTED TO THE FACT THAT THESE PLANS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA

ENGINEERS CERTIFICATION

I HERBY CERTIFY THAT THE ATTACHED PLANS AND DESIGN ARE IN SUBSTANTIAL COMPLIANCE WITH THE DESIGN STANDARDS AND CRITERIA IN EFFECT ON THIS DATE FOR PALM BEACH COUNTY ENGINEERING DEPARTMENT AND THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PROFESSIONAL ENGINEER . 44084

CHRISTOPHER N. O'REILLY, P.E.

ојест но.200450 F:\PROJECT\5049653\2004506\roadway\keysrdOl.dgn

ROADWAY PRODUCTION P. O. BOX 21229, WEST PALM BEACH, FLORID,

PALM BEACH ENGINEERING AND

PPROYED: C.N.O.

RAWNI S.J.L.

CHECKED: T.D.B.

HWY ave.

₽, R, R,

FROM NORTH OF P. TO NORTHLAKE E

0

SHEET: I DF1 70

CORIDA

ELEVATIONS AS SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN VERTICAL DATUM (N.A.V.D.) OF 1988 COORDINATES AS SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN DATUM (N.A.D.) OF 1983/1990 ADJUSTMENT, FLORIDA EAST ZONE.

THESE PLANS HAVE BEEN PREPARED IN ACCORDANCE WITH AND ARE GOVERNED BY THE STATE OF FLORIDA-DEPARTMENT OF TRANSPORTATION DESIGN STANDARDS (DATED 2014).

PLANS PREPARED BY:

Consulting Engineers of Florida, LLC

2000 Palm Beach Lakes Boulevard, Suite 1000 West Palm Beach, FL 33409
Phone: (561) 253-9550 Fax: (561) 253-9551
Certificate of Authorization No. 9302

PROJECT LENGTH IS BASED ON & CONST. & & SURVEY LINE

LENGTH OF PROJECT	FEET	MILES
ROADWAY	2636.14	0.499
BRIDGES	0.00	0.000
NET LENGTH OF PROJECT	2636.14	0.499
EXCEPTIONS	0	0
GROSS LENGTH OF PROJECT	2636.14	0.499

JESS R. SANTAMARIA DISTRICT 6

LOCATION MAP

12/12/2013

7:31:29 AM

