

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 12, 2022

Consent

Regular

Ordinance

Public Hearing

Department: Engineering & Public Works

Submitted By: County Attorney's Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve a mediated settlement in the amount of \$1,170,579.00 including compensation for the taking, business damages, attorney's fees and costs in the eminent domain action styled Palm Beach County v. Jan Real Estate Company Limited Partnership et al., Case No.: 502020CA014166XXXMB. The Condemnation is for the construction of a right turn lane for southbound traffic on North Military Trail to travel westbound on PGA Boulevard.

Summary: This settlement relates to the taking of Parcel 101 in fee simple and a permanent easement designated as Parcel 201, which Palm Beach County acquired to construct the above-referenced project. The County acquired the parcels from the property at the Garden Square Shoppes anchored by a Publix supermarket in Palm Beach Gardens. Parcel 201 was used for the relocation of FPL power lines, sloping, and other construction activities. Countywide (DO)

Background and Justification: The settlement includes \$500,000.00 for the taking of Parcels 101 and 201 and damages to the property, as well as costs to cure those damages, plus \$375,000.00 for business damages to the Publix supermarket. The "cost to cure" is based on redevelopment of the site's parking lot to regain lost parking. The taking resulted in a loss of 22 parking spaces. Although both the County's and the owner's/Publix's experts devised "cure" plans to replace the parking spaces, there are differences over the cost to reconstruct the site, the length of time it will take, whether there were temporary damages to the property while the cure is implemented, and the amount of business damages to Publix. It is noteworthy that the attached proposed Stipulated Final Judgment provides that the owner is required to rebuild the parking lot according to the proposed site plan.


The settlement also includes \$54,879.00 in attorney's fees and \$50,500.00 in expert fees and costs to the owner, Jan Real Estate Company Limited Partnership; and \$98,250.00 in attorney's fees and \$91,950.00 in expert fees and costs to Publix.

The attorney's fees are based on statutory calculations from the negotiated settlement amount for compensation for the taking and business damages.

A proposed stipulated final judgment in a form approved by counsel is also attached (without exhibits). **(Continued on page 3)**

Attachments:

1. Proposed Stipulated Final Judgment
2. Budget Availability Statement

Recommended By:  for Denise Coffman 7/7/22
 Department Director Date

Approved By: N/A
 County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures					
Operating Costs	1,170,579.00				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	1,170,579.00				
# ADDITIONAL FTE					
POSITIONS (CUMULATIVE)					

Is Item included in current budget? **Yes** No

Does this Item include the use of federal funds? Yes **No**

Budget Account No.:

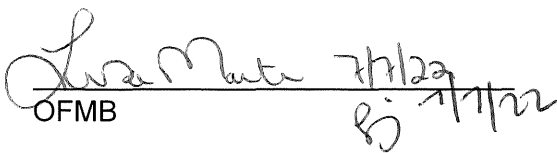
Fund: **3501** Agency: **361** Organization: **1366** Object: **6120**

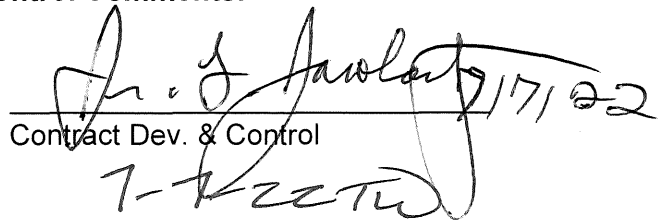
B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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


 OFMB 7/1/22


 Contract Dev. & Control 7/1/22

B. Legal Sufficiency


 Chief Assistant County Attorney

C. Other Department Review

_____ Department Director

Background and Justification (Continued from page 1): The County's appraisal of the property taken was \$386,200.00 and the County's analysis of Publix's business damages was for \$122,000.00 due to the loss of parking during the cure period.

The owner's/Publix's combined appraisal was for \$901,100.00. Publix also claimed business damages for \$651,188.00 based on lost profit during a five-month period to institute the cure and six weeks residual damages before customers fully return.

The compensation for the real estate and business damages of \$875,000.00 is \$366,800.00 over the County's combined appraisal and business damage estimate, but \$677,288.00 below the owner's/Publix's total compensation of \$1,552,288.00.

The settlement is recommended in order to avoid exposure to a higher verdict and avoid potential additional attorney's fees, interest, expert fees and costs.

The Mediated Settlement Agreement was signed by Morton L. Rose, P.E. as Director of the Roadway Production Division on behalf of the Department of Engineering and Public Works.

**CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA**

**CASE NO.: 502020CA014166XXXXMB
PARCEL 101 AND 201**

PALM BEACH COUNTY,

Petitioner,

v.

**JAN REAL ESTATE COMPANY LIMITED
PARTNERSHIP ET AL.,**

Defendants.

_____ /

**STIPULATED FINAL JUDGMENT, ORDER OF APPORTIONMENT,
DISBURSEMENT, AND AWARDING ATTORNEY'S FEES,
EXPERTS' FEES, AND COSTS**

THIS CAUSE having come before the Court on the Joint Motion and Stipulation of the parties, Petitioner, Palm Beach County ("County"), and Defendants, Jan Real Estate Company Limited Partnership ("Jan") and Publix Super Markets, Inc. ("Publix"), for the entry of this Stipulated Final Judgment, Order of Apportionment, Disbursement, and Awarding Attorney's Fees, Experts' Fees, and Costs ("Final Judgment") and the Court 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 Stipulated Order of Taking entered on April 26, 2021 ("Order of Taking") and the deposit of monies thereunder, County acquired fee simple title to the property designated as Parcel 101 and a permanent easement designated as Parcel 201. At the time of the acquisition of Parcel 101, Jan was the owner of that property and continues to own the property subject to Parcel 201. Publix is and has been for more

than five (5) years a lessee of Parcels 101 and 201 and adjoining property on which it has and continues to operate a supermarket business.

2. Subject to apportionment, Jan and Publix shall have and recover from County the sum of FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00) (inclusive of the amounts previously deposited) for the taking of Parcels 101 and 201 and any improvements acquired, damages to the remaining property including damages to improvements and trade fixtures caused by the taking, costs to cure any damages, relocation costs and any and all other damages which may be caused by or related to the taking of Parcels 101 and 201 and the County's use of Parcels 101 and 201, including damages for any trespass by County or its contractor(s) or subcontractor(s) beyond the areas of Parcels 101 and 201 including, but not limited to, the contractor's occupation of the forty-three parking spaces adjacent to Military Trail located outside of the area of taking, any statutory interest, and for any other claims or counter claims which were brought or could have been brought by Jan and Publix caused by or related to the taking of Parcels 101 and 201, exclusive of attorney's fees, experts' fees, costs and damages to Publix's business.

3. Publix shall also have and recover the sum of THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$375,000.00) for damages to its business as a result or relating to the taking of Parcels 101 and 201 and any trespass by County or its contractor(s) or subcontractor(s) beyond the areas of Parcels 101 and 201 including, but not limited to, the contractor's occupation of the forty-three parking spaces adjacent to Military Trail located outside of the area of taking.

4. The compensation provided for in paragraphs 2 and 3 includes any and all compensation due for any trespass by County or its contractors or agents beyond the area of Parcels 101 and 201.

5. Of the Compensation to be paid under paragraph 2, above, the sum of FOUR HUNDRED SIXTY THOUSAND DOLLARS AND NO CENTS (\$460,000.00) is finally apportioned to Jan and FORTY THOUSAND DOLLARS AND NO CENTS (\$40,000.00) is finally apportioned to Publix.

6. The County, having, pursuant to the Order of Taking, previously deposited **THREE HUNDRED EIGHTY SIX THOUSAND TWO HUNDRED DOLLARS AND 00/100 CENTS (\$386,200.00)** into the court registry, the **Clerk of Courts shall disburse this sum** by making a check for this amount payable to the Nason Yeager Trust Account and mailing same to Nathan Nason, Esquire, 3001 PGA Blvd, Ste 305, Palm Beach Gardens, FL 33410-2896 for further disbursement.

7. Jan shall also have and recover from County the sum of \$54,879.00 as full and complete attorney's fees and \$50,500.00 as full and complete expert fees and costs.

8. Within thirty (30) days of its receipt of a certified copy of this Final Judgment, **County shall pay to Jan** the sum of **ONE HUNDRED SEVENTY NINE THOUSAND ONE HUNDRED SEVENTY NINE DOLLARS AND NO CENTS (\$179,179.00)** representing the difference between the amount apportioned to Jan from the recovery relating to the taking of Parcels 101 and 201 and any trespass (\$460,000.00) and the amount previously deposited into the registry of the Court (\$386,200.00) plus full and complete attorney's fees (\$54,879.00) and full and complete expert fees and costs (\$50,500.00), by making a check for this amount payable to the payable to the Nason Yeager Trust Account and mailing same to Nathan Nason, Esquire, 3001 PGA Blvd Ste 305, Palm Beach Gardens, FL 33410-2896 for further disbursement.

9. Publix shall also have and recover from County the sum of \$98,250.00 as full and complete attorney's fees and \$91,950.00 as full and complete expert fees and costs.

10. Within thirty (30) days of its receipt of a certified copy of this Final Judgment, **County shall pay to Publix** the sum of **SIX HUNDRED FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS AND NO CENTS (\$605,200.00)** representing the amounts recovered by Publix for business damages relating to the taking of Parcels 101 and 201 and any trespass (\$375,000.00) plus the amount apportioned to Publix from the recovery relating to the taking of Parcels 101 and 201 and any trespass (\$40,000.00) plus full and complete attorney's fees (\$98,250.00) and full and complete expert fees and costs (\$91,950.00), by making a check for this amount payable to the payable to the Gaylord Merlin Ludovici & Diaz Trust Account and mailing same to Lorena H. Ludovici, Esquire, 5001 West Cypress Street, Tampa, FL 33067 for further disbursement.

11. Should COUNTY fail to construct its roadway improvements for Project No.: 2012506 (PGA Boulevard & Military Trail Intersection Improvements) in manner which materially conforms with the construction plans attached hereto as Exhibit "1," Jan and Publix shall have the same remedies that they would have if the construction plans were introduced into evidence at a trial of compensation and this project was not constructed in a manner that materially conformed with said plans. See Cent. & S. Florida Flood Control Dist. v. Wye River Farms, Inc., 297 So. 2d 323 (Fla. 4th DCA 1974).

12. Except for the exercise of any remedies under paragraph 11, above, there shall be no further compensation of any kind to Jan or Publix as a result of or relating to the taking of Parcels 101 and 201.

13. Jan shall use commercially reasonable efforts to reconstruct the site in material conformance with the site plan attached hereto as Exhibit "2", subject to reasonable amendment or modification attributable to governmental acts or unforeseen circumstances. However, its failure

to do so shall not result in any additional compensation or fees or costs of any kind to Publix from County and Jan and Publix hold County harmless from any damages or claims of any kind relating to such failure.

14. The Order of Taking is approved, ratified, and confirmed.

15. The Court shall retain jurisdiction to enforce the terms of this Stipulated Final Judgment.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this ____ day of _____, 2022.

JOHN S. KASTRENAKES
Circuit Judge

Copies to:

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Barry S. Balmuth, P.A.
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Palm Beach Gardens, FL 33410
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Counsel for 4513 Properties, Inc. dba The UPS Store #1303

Not Served per Default Entered April 29, 2021

Comcast of Arkansas/Louisiana/Minnesota/Mississippi/Tennessee, LLC

Verizon Communications, Inc.

City of Palm Beach Gardens

Mastercare Shutter Corporation

Aneq, Inc. d/b/a Barefoot Wine & Spirits

Bank of America, National Association

Café Chardonnay, Inc.

China Kitchen PGA, Inc.

Evelyn & Arthur, Inc.

Azhure LLC d/b/a Fastframe

Manicurist, LLC d/b/a Halo Nails & Spa

Gardens Spa Services, LLC d/b/a Hand and Stone Massage and Facial Spa

The Hoffman Commercial Group, Inc. d/b/a Hoffman's Chocolate Shoppes

Jonathan T's, Inc.

Cypress Green Associates, Inc. d/b/a Learning Express

Danny's Lili K's Café, LLC d/b/a Lili's Café

Mother Nature's Pantry, PGA, Inc.

Mr. Gyros of Jupiter, LLC

Irish Invasion, Inc. d/b/a Paddy Mac's

Peterson & Young, Inc. d/b/a Peterson & Young Goldsmiths

Pizza Girls PGA, Inc.

Lees Investment Group, Inc. d/b/a Prestige Cleaners

Conundrum Footwear, Inc. d/b/a The Shoe Spa

Sushi Yama PGA, Inc.

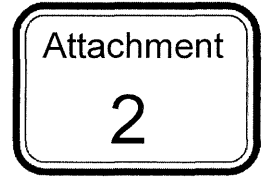
PNC Bank, National Association.

J.A. Caldwell, Inc. d/b/a Optical Gallery

Bloomin' Brands, Inc. d/b/a Outback Steakhouse

Coffee House Holdings, Inc. d/b/a Starbuck's

22.577



BUDGET AVAILABILITY STATEMENT
AIS

Requested By: Kathleen Farrell, P.E. Kathleen Farrell
Request Date: 7/6/22
Project Name: PGA Blvd. & Military Trail Intersection Improvements
Project Number: 2012506

Statement of Scope of Services to be provided:

Compensation for order of taking, business damages, attorney's fees & costs in eminent domain action of PBC v. Jan Real Estate Company Ltd. Partnership, et al. Case No. 502020CA014166XXXXMB

<u>Invoice #</u>	<u>Amount</u>
Settlement to Jan Real Estate	\$1,170,579.00


TOTAL COSTS: \$1,170,579.00

Budget Account Number:

FUND	DEPT.	UNIT	OBJECT
3501	361	1366	6120

Notes:

This is on behalf of the COA for the attached AIS that is going for approval on July 12, 2022.

BAS Approved By:  Date: 7/7/2022