

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

=====

Meeting Date: February 7, 2023	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing

Department: County Attorney

=====

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends a motion to approve a settlement, in the total amount of \$1,107,675, inclusive of attorney’s fees, expert fees, and costs, in the eminent domain action styled Palm Beach County v Carlo J. Grosso, et al., Case No.: 502021CA009288(AG).

Summary: Palm Beach County (“County”) acquired a permanent right of way easement designated as Parcel 106 and temporary construction easements designated as Parcels 306, 317, and 338 from owners Carlo J. Grosso and Ana Maria Grosso on December 28, 2021 for the improvement of Seminole Pratt Whitney Road from 86th Road North to Northlake Boulevard and of Northlake Boulevard from Seminole Pratt Whitney Road to 1,300 feet east. This settlement includes \$650,000 as compensation for the easements acquired, damages to remainder of the property, business damages to C&P Growers, Inc., a nursery business, in addition to \$157,075 as statutory attorney’s fees, and \$300,600 for the expert fees of the property and business owners eight (8) experts, for a total of \$1,107,675. This settlement will completely resolve this eminent domain proceeding as it relates to the parcels acquired. District 6 (DO).

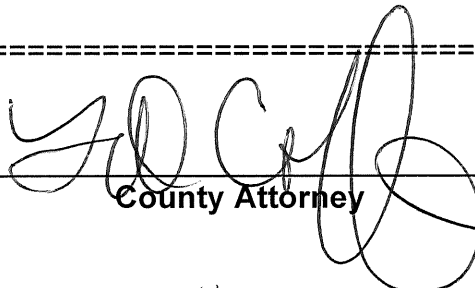
Background and Justification: The County is currently widening both Seminole Pratt Whitney Road and Northlake Boulevard to 4-lane divided roadways, and includes expansion of the intersection of both roads. The County’s appraisal for the necessary right-of-way easement and temporary construction easements is in the amount of \$351,006 and the County’s expert’s opinion of business damages is \$265,633, for a total of \$616,639. The owners’ appraisal is in the amount of \$883,870 or, if additional fill is required on the property due to the County’s project, \$1,241,190. The owners expert’s opinion of business damages is \$588,207, for total compensation of \$1,472,077 or \$1,829,397, if additional fill is needed. The settlement’s \$650,000 in compensation for the easements and business damages is only 5.4% over the County’s experts’ combined estimates of compensation. The statutory monetary benefit attorney’s fees of \$157,075 is based on the increases over initial offers for the real estate compensation made in 2006 and for business damages made in 2009.

(Continued on Page 3)

Attachments:

- Budget Availability Statement.
- Motion for Entry of Stipulated Partial Final Judgment Etc.

=====

Recommended by:		<u>1-30-23</u>
	County Attorney	Date
Approved by:	<u>N/A</u>	
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	\$1,107,675	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-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	\$ 1,107,675	-0-	-0-	-0-	-0-
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-	-0-	-0-	-0-	-0-

Is Item Included in Current Budget?

Yes No

Does this item include the use of federal funds?

Yes No

Budget Account No:

Fund 3503 Dept 361 Unit 0620 Object 6120

Recommended Sources of Funds/Summary of Fiscal Impact:

Road Impact Fee Zone 3
Seminole Pratt-Northlake/Beeline

Number of Parcels Going Into Suit: 4
 Right-of-Way : 1
 Temporary Construction Easement: 3

Parcels:

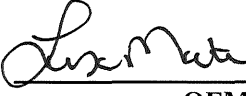
ROW 106
TCE 306,317 & 338

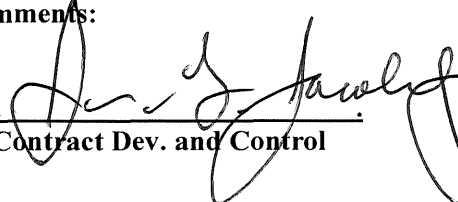
Estimated Total Acquisition Cost \$ 1,107,675

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

*Reviewed
1/31/23*

 OFMB JA 1/31


 Contract Dev. and Control 1/31/23

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)

The County's appraisal for the necessary right-of-way easement and temporary construction easements is in the amount of \$351,006 and the County's expert's opinion of business damages is \$265,633, for a total of \$616,639. The owners' appraisal is in the amount of \$883,870 or, if additional fill is required on the property due to the County's project, \$1,241,190. The owners expert's opinion of business damages is \$588,207, for total compensation of \$1,472,077 or \$1,829,397, if additional fill is needed. The settlement's \$650,000 in compensation for the easements and business damages is only 5.4% over the County's experts' combined estimates of compensation. The statutory monetary benefit attorney's fees of \$157,075 is based on the increases over initial offers for the real estate compensation made in 2006 and for business damages made in 2009.

The amount of the owners' and business owner's expert fees were incurred over 16 years addressing several revisions to the construction project and easements proposed to be acquired. The proposed settlement amount, \$300,600, represents a 21% discount from the sum of \$380,125.13 in expert fees initially sought by the owners and business.

This settlement is cost-effective in light of the expense and risk of a jury trial in this matter. Accordingly, outside counsel, the County Attorney's Office, and the Engineering Department all recommend approval of this settlement, in the total amount of \$1,107,675.

BUDGET AVAILABILITY STATEMENT

Eminent Domain

Requested By: Kathleen Farrell, P.E. Kathleen O Farrell Digitally signed by Kathleen O Farrell
DN: cn=Kathleen O Farrell, o=FLORIDA DEPARTMENT OF TRANSPORTATION, ou=FLORIDA DEPARTMENT OF TRANSPORTATION, email=kfarrell@fdot.com, c=US
 Request Date: 1/30/23
 Project Name: Seminole Pratt Whitney Rd. & Northlake Blvd.
 Project Number: 1997512A3

Statement of Scope of Services to be provided:

Acquisition of a permanent right of way easement designated as Parcel 106 and temporary construction easements designed as Parcels 306, 317 & 338 from owners Carlo J. Grosso & Ana Maria Grosso on 12/28/21 for the improvement of Seminole Pratt Whitney Rd. from 86th Rd. N. to Northlake Blvd. and of Northlake Blvd. from Seminole Pratt Whitney Rd. to 1,300' east. Settlement includes attorney's fees, expert fees, and costs in the eminent domain action.

<u>Invoice #</u>	<u>Amount</u>
AIS settlement	\$1,107,675.00


TOTAL COSTS: \$1,107,675.00

Budget Account Number:

FUND	DEPT.	UNIT	OBJECT
3503	361	0620	6120

Notes:

*****FISCAL APPROVAL *****

BAS Approved By:  Date: 1/31/2023

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

CASE NO.: 502021CA009288(AG)

PARCELS 106/306, 317, AND 338

PALM BEACH COUNTY,

Petitioner,

v.

**CARLO J. GROSSO, ANNA MARIA
GROSSO, et al.,**

Defendants.

_____ /

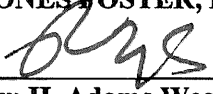
**JOINT MOTION FOR THE ENTRY OF STIPULATED PARTIAL FINAL JUDGMENT,
ORDER OF APPORTIONMENT AND AWARDING ATTORNEY'S FEES, EXPERTS'
FEES, AND COSTS AS TO PARCELS 106/306, 317, AND 338 ONLY**

Comes now the Petitioner, Palm Beach County, and the Defendants, Carlo J. Grosso, Anna Maria Grosso, and C & P Growers, Inc., and respectfully stipulate to the entry of the Stipulated Partial Final Judgment, Order of Apportionment and Awarding Attorney's Fees, Experts' Fees, and Costs as to Parcels 106/306, 317, and 338 Only attached hereto as Exhibit "1" and move for its entry. By executing below, counsel represent that they are authorized to enter into this stipulation and joint motion.

BARRY S. BALMUTH, P.A.

By: Barry S. Balmuth
BARRY S. BALMUTH, ESQUIRE
Florida Bar No. 868991
Counsel for Petitioner
2505 Burns Road
Palm Beach Gardens, FL 33410
(561) 242-9400 Telephone
Barryb@flboardcertifiedlawyer.com
karenb@flboardcertifiedlawyer.com

JONES FOSTER, P.A.

 1/6/23

By: H. Adams Weaver
H. ADAMS WEAVER, ESQUIRE
Florida Bar No. 125210
ROBERTO M. VARGAS, ESQUIRE
Florida Bar No. 0151106
Counsel for Defendants
505 S. Flagler Drive, Suite 1100
West Palm Beach, FL 33401
(561) 659-3000 Telephone
aweaver@jonesfoster.com
rvargas@jonesfoster.com

CERTIFICATE OF SERVICE

I certify that the foregoing document has been served via email through the Florida Court's E-filing portal to all counsel and by U.S. mail to all unrepresented parties listed on the service list on this XXX day of XXXX, 2021.

/s/ Barry S. Balmuth
BARRY S. BALMUTH, B.C.S.

By Electronic Service

Adams Weaver, Esquire
Jones Foster et al.
505 S. Flagler Drive, Suite 1100
West Palm Beach, FL 33402
AWeaver@jonesfoster.com

Attorneys for Carlo J. Grosso, Anna Maria Grosso, C&P Growers, Inc., Northlake Seminole Property LLC. and Belthan Property LLC

Michael Tomkiewicz, Esquire
Gino Luzietti, Esquire
Gray Robinson PA
301 South Bronough Street, Suite 600
Tallahassee, FL 32301
mike.tomkiewicz@gray-robinson.com, gino.luzietti@gray-robinson.com
Attorneys for Richard Carter Price and Ellen Blackman Price

By U.S. Mail

Darla M. Levy
Malcolm S. Levy
330 Brackenwood Circle
Palm Beach Gardens, FL 33418

IRA Plan Partners LLC d/b/a iPlanGroup
Christopher Wetherbee, as its registered agent
39 Public Square, Suite 201
Medina, Ohio 44256

EXHIBIT 1

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

CASE NO.: 502021CA009288(AG)

**PARCELS 106/306, 317, and 338
PALM BEACH COUNTY,**

Petitioner,

v.

**CARLO J. GROSSO, ANNA MARIA
GROSSO, et al.,**

Defendants.

**STIPULATED PARTIAL FINAL JUDGMENT, ORDER OF APPORTIONMENT
AND AWARDING ATTORNEY'S FEES, EXPERTS' FEES, AND COSTS AS TO
PARCELS 106/306, 317, AND 338 ONLY**

THIS CAUSE having come before the Court on the Joint Motion and Stipulation of the parties, Petitioner, Palm Beach County ("County"), and Defendants, Carlo J. Grosso, Anna Maria Grosso, and C & P Growers, Inc. (when referred to collectively, Carlo J. Grosso, Anna Maria Grosso, and C & P Growers, Inc., will be referred to as the "Grossos"), for the entry of this Stipulated Partial Final Judgment, Order of Apportionment and Awarding Attorney's Fees, Experts' Fees, and Costs as to Parcels 106/306, 317, and 338 Only ("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 Third Amended Order of Taking as to Parcels 106/306, 110/310, 111/311, 309, 317, 336, and 338 entered on December 6, 2021 and that Agreed Order Granting Petitioner's Motion for an Order Amending the Third Amended Agreed Order Of Taking as to Parcels 106/306, 110/310, 111/311, 309, 317,

336, And 338 Nunc Pro Tunc entered August 1, 2022 (collectively these orders will be referred to as the “Order of Taking”) and the deposit of monies thereunder, County acquired a Permanent Right of way easement designated as Parcel 106 and temporary construction easements designated as Parcels 306, 317, and 338 (and other parcels not the subject of this Final Judgment). At the time of the acquisition of Parcels 106/306, 317, and 338, Carlo J. Grosso and Anna Maria Grosso were the owners of the property subject to these easements and the owners of C & P Growers, Inc., a lessee under an oral lease operating a nursery business on the property.

2. Subject to apportionment, Grossos shall recover from County the sum of SIX HUNDRED FIFTY THOUSAND AND NO CENTS (\$650,000.00) for the taking of Parcels 106/306, 317, and 338 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, damages to the business of C&P Growers, Inc. and any other business damages, relocation costs and any and all other damages which may be caused or have been caused by or related to the taking of Parcels 106/306, 317, and 338 and the County’s use of Parcels 106/306, 317, and 338, any statutory interest, and for any other claims or counter claims which were brought or could have been brought by the Grossos caused by or related to the taking of Parcels 106/306, 317, and 338 exclusive only of attorney’s fees, expert fees, and costs.

3. The above recovery is inclusive of the amounts previously deposited pursuant to the Order of Taking, \$316,232.00, which sum was previously disbursed to Carlo J. Grosso and Anna Maria Grosso.

4. Grossos being the only parties with an interest in the property which has appeared in this action, the above recovery is fully and finally apportioned to them.

5. Grossos shall also recover from County the sum of \$157,075 as full and complete attorney's fees and \$300,600.00 as full and complete expert fees and costs.

6. Within thirty (30) days of its receipt of a certified copy of this Final Judgment, **County** shall pay the sum of **SEVEN HUNDRED NINETY ONE THOUSAND FOUR HUNDRED FORTY-THREE DOLLARS AND NO CENTS (\$791,443.00)** representing the difference between the amounts recovered for the taking of Parcels 106/306, 317, and 338 hereunder and the amount previously deposited into the registry of the Court plus the above-referenced attorney's fees and expert fees and costs, by making a check for this amount payable to the Jones Foster, P.A. Trust Account and mailing same to Roberto M. Vargas, Esquire, Jones Foster, 505 South Flagler Drive, Suite 1100, West Palm Beach, Florida 33401 for further disbursement.

7. In accordance with the correspondence from Doug Wise, County Building Official to Carlo Grosso attached hereto as Exhibit "A," the requirements of minimum floor elevation under Palm Beach County Unified Land Development Code relating to Grossos' remaining property will not change due to the County's road project number 1997512A3 for the improvement Northlake Boulevard from Seminole Pratt Whitney Road to 1,300 feet east.

8. At the east end of the Grossos' property: County shall align the driveway on the Grossos' property north of Northlake Boulevard with the driveway on the Grossos' property south of Northlake Boulevard; the driveway on the northern property will be sloped and graded at 10:1 and the proposed gravity wall will be adjusted to accommodate it; and both the driveway on the northern property and on the southern property shall be 24 feet wide.

9. At the west end of the Grossos' property: County shall provide a drop curb for a second driveway on the Grossos' south property on Northlake Boulevard; this driveway shall be

configured for right-in access only and be 15 feet in width and the proposed gravity wall shall be adjusted to accommodate it.

10. County will not object to the driveway location that Carlo J. Grosso and Anna Maria Grosso submitted under Palm Beach County Land Development Permit Application RW56949, provided it meets all County standards.

11. There shall be no further compensation for or relating to the taking of Parcels 106/306, 317, and 338.

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

13. This Stipulated Partial Final Judgment shall not affect the compensation relating to any other parcels in this action.

14. 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 _____, 20__.

LOUIS DELGADO
Circuit Judge

Copies to:

By Electronic Service

Adams Weaver, Esquire
Jones Foster et al.
505 S. Flagler Drive, Suite 1100
West Palm Beach, FL 33402
AWeaver@jonesfoster.com

Attorneys for Carlo J. Grosso, Anna Maria Grosso, C&P Growers, Inc., Northlake Seminole Property LLC. and Belthan Property LLC

Michael Tomkiewicz, Esquire
Gino Luzietti, Esquire
Gray Robinson PA
301 South Bronough Street, Suite 600
Tallahassee, FL 32301
mike.tomkiewicz@gray-robinson.com, gino.luzietti@gray-robinson.com
Attorneys for Richard Carter Price and Ellen Blackman Price

Petitioner shall send a copy by U.S. Mail to:

Darla M. Levy
Malcolm S. Levy
330 Brackenwood Circle
Palm Beach Gardens, FL 33418

IRA Plan Partners LLC d/b/a iPlanGroup
Christopher Wetherbee, as its registered agent
39 Public Square, Suite 201
Medina, Ohio 44256

EXHIBIT A



**Department of Planning,
Zoning & Building**

2300 North Jog Road
West Palm Beach, FL 33411-2741
(561) 233-5000

Planning Division 233-5300
Zoning Division 233-5200
Building Division 233-5100
Code Enforcement 233-5500
Contractors Certification 233-5525
Administration Office 233-5005
Executive Office 233-5228
www.pbcgov.com/pzb



**Palm Beach County
Board of County
Commissioners**

Robert S. Weinroth, Mayor
Gregg K. Weiss, Vice Mayor

Maria G. Marino
Dave Kerner
Maria Sachs
Melissa McKinlay
Mack Bernard

County Administrator

Verdenia C. Baker

*"An Equal Opportunity
Affirmative Action Employer"*

printed on sustainable
and recycled paper

October 27, 2022

Mr. Carlo Grosso
15742 Northlake Blvd.
West palm Beach, FL 33412

Re: Requirement for Minimum Finished Floor Elevation Relating to Lowest Adjacent Road Crown (LARC)

Dear Mr. Grosso:

You have expressed concern about Palm Beach County's plan to raise the road crown for Northlake Blvd. and its effect on your adjacent property. Specifically, your concern is that a higher road crown will increase the minimum required finished floor elevation for your property, which will in turn require additional fill.

Generally, for a major arterial roadway like Northlake Blvd., the elevation requirements for the road are higher than roads of a lesser critical use. Therefore, in accordance with our historical interpretation of the Unified Land Development Code (ULDC), use of a major arterial roadway, such as Northlake Blvd., to determine the minimum floor elevation in these cases could result in an unreasonable minimum floor elevation requirement. ULDC Article 18 requires use of the lowest adjacent road crown (LARC) to determine minimum floor elevation.

Accordingly, for your specific property, it is more appropriate to consider the maintenance road to the east for determining the LARC and minimum floor elevation. Therefore, the requirements for the minimum floor elevation would not change due to changes on Northlake Blvd.

If you have any further questions, please do not hesitate to contact me at dwise@pbcgov.org or 561-233-5192.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Wise".

Doug Wise, Building Official
Building Division Director