

Add On

Meeting Date
October 18, 2016



AGENDA	
Section	New Business
Item No.	VI.D.1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approve Stipulated Final Judgment in the amount of \$39,525.00 Re: Brevard County v. B West Townhouses LTD, et al, Case No: 05-2013-CA-025677-XXXX-XX (Tradewinds Plaza, LLC Parcels No. 117, 706 and 828)
DEPT/OFFICE:	County Attorney's Office and Public Works Department Scott Knox, County Attorney and Eden Bentley, Deputy County Attorney <u>Scott.knox@brevardcounty.us</u> ; <u>eden.bentley@brevardcounty.us</u> John Denninghoff, Director Public Works, <u>john.denninghoff@brevardcounty.us</u>

Requested Action:

Approve Stipulated Final Judgment in the amount of \$39,525, less amount previously deposited.

Summary Explanation & Background:

A petition in eminent domain was filed in 2013 to take necessary parcels for a portion of Barnes Boulevard. On October 4, 2016 the Board of County Commissioners met in an attorney-client private meeting and authorized settlement in the amount provided in the attached Joint Motion and Stipulated Final Judgment for the land taken, damages to the remainder and attorney's fees. There is a provision allowing a claim for damages in the event there is actually flooding of the property as a direct result of the road widening project. This provision merely prevents the county from arguing flooding damages were paid as part of the settlement. They were not. The County does not anticipate flooding based on the engineer's calculations. Expert witness fees remain outstanding and will be presented at a later date.

Fiscal Impact: \$32,525.00 (Settlement of \$39,525 less \$9,000.00 previously paid)
 Commission District: 5
 Fund Account/Cost Code: 1163/265160/5610000

Clerk to the Board Instructions:

Exhibits Attached: Joint Motion and Stipulated Final Judgment (Parcels No. 117, 706, and 828)

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager	Department Director / Extension
Stockton Whitten	Assistant County Manager	John Denninghoff, Public Works Director
		Scott Knox, County Attorney



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
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Tammy.Rowe@brevardclerk.us

October 19, 2016

MEMORANDUM

TO: Scott Knox, County Attorney Attn: Eden Bentley

RE: Item VI.D.1., Stipulated Final Judgment, in the Amount of \$39,525, for Brevard County v. B. West Townhouses LTD, et al, Case No.: 05-2013-CA-025677-XXXX-XX (Tradewinds Plaza, LLC – Parcel Nos. 117, 706, and 828)

The Board of County Commissioners, in regular session on October 18, 2016, approved Stipulated Final Judgment, in the amount of \$39,525, for Brevard County v. B. West Townhouses LTD, et al, Case No.: 05-2013-CA-025677-XXXX-XX (Tradewinds Plaza, LLC – Parcel Nos. 117, 706, and 828).

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: Public Works Director

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA

BREVARD COUNTY, FLORIDA,
A political subdivision of the State of Florida,

Petitioner,

CASE NO.: 05-2013-CA-025677

Parcel Nos.: 117, 706 and 828
TRADEWINDS

v.

B WEST TOWNHOUSES, LTD., et al,

Respondents/Defendants.

**STIPULATED PARTIAL FINAL JUDGMENT AS TO PARCELS 117, 706, AND 828
WITH JOINT MOTION**

THIS CAUSE having come on for consideration upon the Joint Motion for Entry of Partial Final Judgment by Petitioner, BREVARD COUNTY, FLORIDA ("Petitioner"), and Respondent, TRADEWINDS PLAZA, LLC. ("Tradewinds"), as the former fee owner of Parcels 117, 706, and 828, and it appearing to the Court that the parties were authorized to enter into such motion, the Court finding that the compensation to be paid by the Petitioner is full, just and reasonable for all parties concerned and the Court being otherwise fully advised in the premises, it is now, therefore

ORDERED AND ADJUDGED as follows:

1. That Respondent, TRADEWINDS PLAZA, LLC. ("Tradewinds") does have and recover of and from Petitioner the sum of **Thirty-two Thousand Five Hundred Twenty-Five and 00/100 Dollars (\$32,525.00) less the \$9,000 previously deposited**, in full payment for the property designated as Parcels 117, 706, and 828 herein taken, for value, severance damages, business damages, if any, and all other damages, and the sum of **Seven Thousand and 00/100 Dollars (\$7,000.00)** for attorney's fees.

2. That title to the following described property, to wit: **Exhibit "A"** which vested in Petitioner pursuant to the Stipulated Order of Taking and deposit on September 26, 2013, heretofore made, is hereby approved, confirmed and ratified.

3. That within thirty (30) days after receipt by Petitioner of a conformed copy of this Partial Final Judgment, Petitioner shall issue a check in the amount of **Thirty Thousand Five Hundred Twenty-five and No/100 Dollars (\$30,525.00)**, payable to the Gray Robinson P.A. Trust Account, this sum being the difference between Petitioner's initial deposit of \$9,000.00 and the final award in Paragraph 1, plus attorney's fees pursuant to Paragraph 1 herein. Petitioner shall mail said check to: Jack Kirschenbaum, Esquire, Gray Robinson PA, P.O. Box 1870, Melbourne, FL, 32902-1870.

4. The parties stipulate and agree that Tradewinds reserves the right to bring any and all actions against the Petitioner should, as a result of the Project and construction on Barnes Boulevard, it suffers flooding or damages relating to run-off from the Project.

5. That this Court retains and reserves jurisdiction to award expert witness fees and costs.

DONE AND ORDERED in Chambers at Titusville, Brevard County, Florida, this _____ day of _____ 2016.

JOHN M. HARRIS
Circuit Judge

**CERTIFICATE OF
SERVICE**

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this _____ date of _____, 2016, by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorneys/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

Judicial Assistant

**JOINT MOTION FOR ENTRY OF STIPULATED PARTIAL FINAL JUDGMENT
AS TO PARCELS 117, 706, 828**

Petitioner, BREVARD COUNTY, FLORIDA, and Defendant, TRADEWINDS PLAZA, LLC, by and through their undersigned counsel, respectfully move for entry of the foregoing Stipulated Partial Final Judgment as to Parcels 117, 706, and 828. The undersigned are authorized to enter into this Motion. The tenants joined in the lawsuit join in the Motion as shown below.

Eden Bentley, Esquire
Deputy County Attorney
2725 Judge Fran Jamieson Way
Building C-Suite #308
Viera, FL 32940
eden.bentley@brevardcounty.us
cathleen.cummings@brevardcounty.us
Attorney for Petitioner, Brevard County,
Florida

Dated _____, 2016

Tenant
Himalaya Asian Cuisine, Inc.
d/b/a Himalaya Asian Bistro
Zhong Hui Lin, Registered Agent
634 Barnes Boulevard, Unit 118
Rockledge, FL 32955

Dated 10/4, 2016

JACK A. KIRSCHENBAUM, ESQ
Florida Bar No. 350759
PO Box 1870
Melbourne, FL 32902-1870
Tel: (321) 727-8100
Fax (321) 984-4122
jack.kirschenbaum@gray-robinson.com
Attorneys for Respondent, Tradewinds Plaza,
LLC

Dated: 10/4, 2016

Tenant
Clip Joint Barber Shop, LLC
Paul Bologna, Registered Agent
634 Barnes Boulevard, Unit 104
Rockledge, FL 32955

Dated 10/4, 2016

EXHIBIT "A"

Description: Parcel No. 113 - Fee Simple

A parcel of land lying in the Northwest 1/4 of Section 21, Township 25 South, Range 36 East, being a portion of those lands as described per O.R. Book 5548, Page 3639 of the Public Records of Brevard County, Florida; said subject parcel being more fully described as follows:

Commence at the northwest corner of the Northwest 1/4 of said Section 21 as monumented by a concrete monument stamped "Paxton" as shown on Florida Department of Environmental Protection Certified Corner Record ("C.C.R.") Document No. 0020078; thence S.01 degrees 15'43"E., along the west line of said Northwest 1/4, a distance of 2620.75 feet to the north line of the 100.00 foot wide right-of-way of Barnes Boulevard as described in O.R. Book 0139, Page 0585 of said Public Records, said point lying N.01 degrees 15'43"W. and 36.72 feet from the southwest corner of said Northwest 1/4 as monumented by nail and washer in pavement over a concrete monument stamped "Paxton" as shown on C.C.R. Document No. 0027674; thence departing said west line, N.89 degrees 54'42" E., along said north right-of-way line, a distance of 872.32 feet to the east line of a 40.00 foot wide public drainage easement per O.R. Book 3718, Page 4512 of said Public Records and the Point-of-Beginning of the lands herein described; thence departing said north right-of-way line, N.05 degrees 34'40"E., along said east line, a distance of 14.07 feet; thence departing said west line, N.89 degrees 54'42"E., parallel with and 14.00 feet north, by right angle measure, of said north right-of-way line, a distance of 476.65 feet to the east line of said lands; thence S.01 degrees 16'39"E., along said east line, a distance of 14.00 feet to said north right-of-way line, also being the south line of said lands; thence S.89 degrees 54'42"W., along said north right-of-way line, a distance of 478.33 feet to the Point-of-Beginning.

Containing 0.15 acres (6,685 square feet) more or less, and being subject to any restrictions, covenants, easements and/or rights-of-way of record.

Description: Parcel No. 150 - Fee Simple

A parcel of land lying in the Northwest 1/4 of Section 21, Township 25 South, Range 36 East and being the south 14.00 feet, by right angle measure of that 40.00 foot wide public drainage easement recorded in O.R. Book 3718, Page 4512 of the Public Records of Brevard County, Florida which encumbers the west 40.00 feet, by right angle of measure of those lands as described in O.R. Book 5548, Page 3639 of said Public Records; said subject parcel being quantitatively described as follows:

Commence at the northwest corner of the Northwest 1/4 of said Section 21 as monumented by a concrete monument stamped "Paxton" as shown on Florida Department of Environmental Protection Certified Corner Record ("C.C.R.") Document No. 0020078; thence S.01 degrees 15'43"E., along the west line of said Northwest 1/4, a distance of 2620.75 feet to the north line of the 100.00 foot wide right-of-way of Barnes Boulevard as described in O.R. Book 0139, Page 0585 of said Public Records which lies N.01 degrees 15'43"W. and 36.72 feet from the southwest corner of said Northwest 1/4 as monumented by nail and washer in pavement over a concrete monument stamped "Paxton" as shown on C.C.R. Document No. 0027674; thence departing said west line, N.89 degrees 54'42"E., along said north right-of-way line, a distance of 832.12 feet to the west line of said easement and the Point-of-Beginning of the lands herein described; thence departing said north right-of-way line, N.05 degrees 34'40"E., along said west easement line, a distance of 14.07 feet; thence departing said west line, N.89 degrees 54'42"E., parallel with and 14.00 feet north, by right angle measure, of said north right-of-way line, a distance of 40.20 feet to the east line of said easement; thence S.05 degrees 34'40"W., along said east easement line, a distance of 14.07 feet to said north right-of-way line; thence S.89 degrees 54'42"W., along said north right-of-way line, a distance of 40.20 feet to the Point-of-Beginning.

Containing 0.01 acres (563 square feet) more or less, and being subject to any restrictions, covenants, easements and/or rights-of-way of record.

Description: Parcel No. 832 - Permanent Drainage, Wall, Landscape, Utility and Sidewalk Easement

A parcel of land lying in the Northwest 1/4 of Section 21, Township 25 South, Range 36 East, being a portion of those lands as described per O.R. Book 5548, Page 3639 of the Public Records of Brevard County, Florida; said subject parcel being more fully described as follows:

Commence at the northwest corner of the Northwest 1/4 of said Section 21 as monumented by a concrete monument stamped "Paxton" as shown on Florida Department of Environmental Protection Certified Corner Record ("C.C.R.") Document No. 0020078; thence S.01 degrees 15'43"E., along the west line of said Northwest 1/4, a distance of 2620.75 feet to the north line of the 100.00 foot wide right-of-way of Barnes Boulevard as described in O.R. Book 0139, Page 0585 of said Public Records which lies N.01 degrees 15'43"W. and 36.72 feet from the southwest corner of said Northwest 1/4 as monumented by nail and washer in pavement over a concrete monument stamped "Paxton" as shown on C.C.R. Document No. 0027674; thence departing said west line, N.89 degrees 54'42" E., along said north right-of-way line, a distance of 832.12 feet to the west line of said lands; thence departing said north right-of-way line, N.05 degrees 34'40"E., along said west line, a distance of 14.07 feet; thence departing said west line, N.89 degrees 54'42"E., parallel with and 14.00 feet north, by right angle measure, of said north right-of-way line, a distance of 40.20 feet to the east line of a 40.00 foot wide public drainage easement as described in O.R. Book 3718, Page 4512 and to the Point-of-Beginning of the lands herein described; thence along said east line, N.05 degrees 34'40"E., a distance of 6.03 feet; thence departing said east line, N. 89 degrees 54'42"E., parallel with and 20.00 feet north, by right angle measure, of said north right-of-way line, a distance of 475.93 feet to the east line of said lands; thence S.01 degrees 16'39"E., along said east line, a distance of 6.00 feet; thence departing said east line, S.89 degrees 54'42"W., parallel with and 14.00 feet north, by right angle measure, of said north right-of-way line, a distance of 476.65 feet to the Point-of-Beginning.

Containing 0.07 acres (2,858 square feet) more or less, and being subject to any restrictions, covenants, easements and/or rights-of-way of record.