



ADD-ON

AGENDA

Meeting Date
July 12, 2016

Section	New Business
Item No.	VI D 1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Defendant, B West Townhouses, Ltd.'s, Offer of Judgment to Brevard County in Brevard County, Florida v. B West Townhouses, Ltd., Case No. 05-2013-CA-025677
DEPT/OFFICE:	Public Works Department, John Denninghoff County Attorney's Office, Scott Knox/Eden Bentley

Requested Action:

It is requested that the Board consider and reject the Offer of Judgment from B West and authorize offer of judgment to B West in the amount of \$42,000.00. (Option 3)

Summary Explanation & Background:

Background: In 2013, Brevard County condemned a narrow strip of property (approximately 14 feet wide) along Barnes Boulevard from Respondent, B West Townhouses, Ltd. (B West) The County's appraised value was \$21,000.00. The property owner presented a land value and severance damage claim of \$150,000.00; attorney's fees and reasonable costs must also be paid per the statutory requirements. The offer of judgment is \$58,240.00 plus attorney's fees and costs. The number proposed is nearly three times the County's appraised value. The costs were approximately \$38,000 during the week of June 24, 2016. Attorney's fees would range from \$12,289.20 to \$8,659.20 based on the current offer from B West. If the Offer of Judgment is accepted, a Final Judgment as to land value and damages would be entered at \$58,240.00. The issues of costs would be addressed via a later stipulation or trial. The attorney fees would be set at the statutory rate. At \$58,240.00, the claim for costs and attorney's fees as presented today would be \$50,289.20 for a total potential payment on this case of \$108,529.20.

Staff recommends rejection of the Offer of Judgment from B West. Staff requests authorization to submit an Offer of Judgment in the amount of \$42,000.00 to B West. While this number is significantly higher than the county's appraised value, numerous additional costs will be avoided if the case is settled prior to trial. The reasonableness of the costs incurred prior to settlement will be addressed at a later date. Payment of the statutory attorney fee would be required if the offer to B West is accepted.

Options:

- 1) Accept Respondent, B West Townhouses, Ltd.'s, Offer of Judgment.
- 2) Reject Respondent, B West Townhouses, Ltd.'s, Offer of Judgment.
- 3) Reject Respondent, B West Townhouses, Ltd.'s, Offer of Judgment with a counter offer of \$42,000.00.
- 4) Reject Respondent, B West Townhouses, Ltd.'s, Offer of Judgment and instruct staff on a counter offer to owner.
- 5) Take no action.
- 6) Request executive session prior to July 23, 2016.

Fiscal impact: Depends on option chosen.

Clerk to the Board Instructions:

Exhibits Attached: Respondent, B West Townhouses, Ltd.'s, Offer of Judgment

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 Scott Knox



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

July 13, 2016

MEMORANDUM

TO: John Denninghoff, Public Works Director

RE: Item VI.D.1., Acknowledge and Reject Offer of Judgment of Brevard County v. B West Townhouses, Ltd., Case No. 05-2013-CA-025677-XXXX-XX

The Board of Commissioners, in regular session on July 12, 2016, approved Option 3, to reject the Offer of Judgment from B West Townhouses, Ltd.; and authorized a counter offer in the amount of \$42,000.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: County Attorney
Finance
Budget

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,

CASE NO.: 05-2013-CA-025677-XXXX-
XX

Petitioner,

v.

Parcel No.: 113, 150, 832

B WEST TOWNHOUSES, LTD., a
Florida Limited Partnership, et al.,

Defendants.

**DEFENDANT B WEST TOWNHOUSES, LTD.'S
OFFER OF JUDGMENT TO PETITIONER BREVARD COUNTY**

PLEASE TAKE NOTICE that Defendant, B WEST TOWNHOUSES, LTD. ("B West"), by and through the undersigned counsel and pursuant to the Rule 1.442 of Fla. R. Civ. P. and § 73.032, Florida Statutes, hereby serves this Offer of Judgment/Proposal for Settlement upon Petitioner, BREVARD COUNTY, FLORIDA ("Brevard County"), and states as follows:

1. B West makes this Offer of Judgment/Proposal for Settlement to completely resolve all claims and damages of B West that would otherwise be awarded in a Final Judgment in the above-styled action as to Parcels 113, 150 and 832, exclusive of attorney's fees and costs, for the total sum of Fifty Eight Thousand Two Hundred Forty and No/100 Dollars (\$58,240.00).
2. Attorney's fees and costs are part of the B West's legal claim.
3. The following conditions apply to this Offer of Judgment/Proposal for Settlement:
 - (a) Execution of the Joint Motion for Entry of a Stipulated Final Judgment will occur within a reasonable period not to exceed sixty (60) days after receipt of Brevard County's written acceptance of this Offer of Judgment/Proposal for Settlement. A copy of the proposed Stipulated Final Judgment is attached hereto as Exhibit "A" ("Final Judgment").

(b) Brevard County's previous deposit of Twenty One Thousand and No/100 Dollars (\$21,000.00) on account of Parcels 113, 150 and 832 shall be credited against the total sum of this Offer of Judgment/Proposal for Settlement.

(c) Following receipt of Brevard County's written acceptance of this Offer of Judgment/Proposal for Settlement, B West's attorney's fees and costs shall be adjudicated by this Court pursuant to Rule 1.525, Fla. R. Civ. P. and §§73.091 and 73.092, Florida Statutes.

4. Should Brevard County fail to accept this Offer of Judgment/Proposal for Settlement within thirty (30) days after service hereof, it shall be deemed rejected. Evidence of this Offer of Judgment/Proposal for Settlement is inadmissible except in a proceeding to determine the fees and costs of B West.

Dated this 24th day of June, 2016.

SHUTTS & BOWEN LLP
Attorneys for Defendant,
B WEST TOWNHOUSES, LTD.,
200 East Broward Boulevard, Ste. 2100
Fort Lauderdale, FL 33301
Telephone: (954) 847-3825

By: /s/ SUZANNE M. DRISCOLL
SUZANNE M. DRISCOLL
Florida Bar No. 827797
sdriscoll@shutts.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 24th day of June, 2016, a true and correct copy of the foregoing was served via electronic mail to the account listed below.

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

/s/ Suzanne M. Driscoll
Suzanne M. Driscoll, Esq.

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EXHIBIT A

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,

CASE NO.: 05-2013-CA-025677-XXXX-
XX

Petitioner,

v.

Parcel No.: 113, 150, 832

B WEST TOWNHOUSES, LTD., a
Florida Limited Partnership, et al.,

Defendants.

STIPULATED FINAL JUDGMENT AS TO PARCELS 113, 150 AND 832
WITH JOINT MOTION

THIS CAUSE having come on for consideration upon the Joint Motion for Entry of Final Judgment by Petitioner, **BREVARD COUNTY, FLORIDA** (“Petitioner”), and Defendant, **B WEST TOWNHOUSES, LTD.**, as the former fee owner of Parcels 113, 150 and 832, 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 Defendant, **B WEST TOWNHOUSES, LTD.** (“B West”), does have and recover of and from Petitioner the sum of **Fifty Eight Thousand Two Hundred Forty and 00/100 Dollars (\$58,240.00)**, in full payment for the property designated as Parcels 113, 150 and 832 herein taken, severance damages, business damages, if any, and all other damages except claims for attorneys' fees, expert fees and costs, pursuant to §§ 73.091 and 73.092, *Florida Statutes*.

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 Final Judgment, Petitioner shall issue a check in the amount of **Thirty Seven Thousand Two Hundred Forty and No/100 Dollars (\$37,240.00)**, payable to the Shutts & Bowen LLP Trust Account. This sum being the difference between Petitioner's initial deposit of \$21,000.00 and the final award pursuant to Paragraph 1 herein. Petitioner shall mail said check to: Suzanne M. Driscoll, Esquire, Shutts & Bowen LLP, 200 East Broward Boulevard, Suite 2100, Fort Lauderdale, Florida 33301.

4. That this Court retains and reserves jurisdiction to: (1) enforce the terms of this Final Judgment, (2) to award B West its costs and fees pursuant to §§73.091 and 73.092, *Florida Statutes*, and (3) to determine any supplementary and post judgment matters, if applicable.

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 ____ day 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 FINAL JUDGMENT
AS TO PARCELS 113, 150, 832

Petitioner, **BREVARD COUNTY, FLORIDA**, and Defendant, **B WEST TOWNHOUSES, LTD.**, by and through their undersigned counsel, respectfully move for entry of the foregoing Stipulated Final Judgment as to Parcels 113, 150 and 832. The undersigned are authorized to enter into this Motion.

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*

Suzanne M. Driscoll, Esquire
Shutts & Bowen LLP
200 East Broward Boulevard
Suite 2100
Fort Lauderdale, FL 33301
sdriscoll@shutts.com
ehumaran@shutts.com
*Attorneys for Respondent,
B West Townhouses, Ltd.*

Dated: _____, 2016

Dated: _____, 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.