

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM: Monroe D. Kiar, Town Attorney
954-584-9770

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA APPROVING STIPULATION FOR SETTLEMENT AND JOINT MOTION FOR ORDER DISMISSING WITH PREJUDICE ALL CLAIMS OF INJUNCTION PARTIES IN CASE NUMBER 00-18394 (08) CACE, NOW PENDING IN BROWARD COUNTY CIRCUIT COURT, AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: A draft of a Stipulation for Settlement and Joint Motion for Order Dismissing with Prejudice all Claims of Injunction Plaintiffs, including the Town of Davie, was jointly prepared by the Chief Appellate Attorney for Broward County and the lawyers representing the Florida Department of Agriculture and Consumer Services, along with input from the various municipal attorneys. Mr. Meyers, the Chief Appellate Attorney, indicates that the parties have spent numerous hours negotiating with the Department and that this matter must now be resolved within the next several weeks because if it is not, each side must prepare a cost motion ahead of the July 30, deadline established by the Court. Mr. Meyers believes that the agreement for each side to bear its own costs is fair and that the Stipulation gives away very little, given that all of the issues which were previously raised have been resolved by the Appellate and Supreme Courts. Also, in light of the belief that the attorneys' fees expended by the Department of Agriculture and Consumer Services is considerable, it is the belief that it is in the best interest of the Town of Davie as well as the other municipalities, that they execute this Stipulation whereby each shall bear their own costs and attorneys' fees incurred in connection with the litigation.

With regard to the governmental entities, including the Town of Davie, it is necessary that each of their respective attorneys execute the Stipulation and therefore, it is necessary that there be a vote by the Town Council to authorize the Town Attorney for Davie to do so.

A copy of the proposed Stipulation for Settlement and Joint Motion for Order Dismissing With Prejudice All Claims of Injunction Plaintiffs has been previously provided to the Town Administrator, Mayor, and Councilmembers on June 18, 2004. An additional copy has been attached as Exhibit "A" to the proposed Resolution.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT:

RECOMMENDATION(S): Motion to approve this Resolution

ATTACHMENTS: Resolution, copy of Stipulation for Settlement and Joint Motion for Order Dismissing With Prejudice All Claims of Injunction Plaintiffs.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA APPROVING STIPULATION FOR SETTLEMENT AND JOINT MOTION FOR ORDER DISMISSING WITH PREJUDICE ALL CLAIMS OF INJUNCTION PARTIES IN CASE NUMBER 00-18394 (08) CACE, NOW PENDING IN BROWARD COUNTY CIRCUIT COURT, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie, Broward County, and other municipal and governmental entities initiated a lawsuit against the Florida Department of Agriculture and Consumer Services seeking injunctive relief against the Department of Agriculture and Consumer Services challenging the constitutionality, validity and implementation of certain Florida Statutes, collectively known as the “Canker Law”, relating to the Citrus Canker Eradication Program; and

WHEREAS, rulings by the Florida Supreme Court and the 4th District Court of Appeal have resolved all of the challenges brought by the injunction plaintiffs, including the Town of Davie; and

WHEREAS, the Chief Appellate Attorney for Broward County and the lawyers representing the Florida Department of Agriculture and Consumer Services have drafted the attached Stipulation for Settlement and Joint Motion for Order Dismissing with Prejudice All Claims of Injunction Plaintiffs, including the Town of Davie; and

WHEREAS, paragraph 9 of the proposed Stipulation provides “Each side (the Injunction Plaintiffs and the Department) shall bear its own costs and attorneys’ fees incurred in connection with the litigation (other than any claim for inverse condemnation in Count I) and in connection with all the related appeals before the 4th District Court of Appeal and the Florida Supreme Court. Nothing in this Stipulation shall prevent the Department from moving to tax attorneys’ fees or costs against any Plaintiff to the litigation which is not a party to and bound by this Stipulation.”; and

WHEREAS, it is believed to be in the best interest of the Town of Davie to approve and ratify the proposed Stipulation for Settlement and Joint Motion for Order Dismissing with Prejudice all Claims of Injunction Plaintiffs, a copy of which is annexed hereto as Exhibit “A”.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the Town Council of the Town of Davie, Florida hereby approves and ratifies the proposed Stipulation for Settlement and Joint Motion for Order Dismissing with Prejudice all Claims of Injunction Plaintiffs attached hereto and hereby authorizes the Town Attorney to execute same on behalf of the Town of Davie.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2004.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2004.

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1. This Stipulation addresses all counts and issues in the above-styled lawsuit (the "Litigation") other than Count I for inverse condemnation.
2. In this Litigation, the Injunction Plaintiffs sought injunctive relief against the Department under various legal theories and claims challenging the constitutionality, validity and implementation of statutes (collectively, the "Canker Law") relating to the Citrus Canker Eradication Program (the "CCEP").
3. The Department and the Injunction Plaintiffs expended substantial resources litigating these challenges, both in the trial court and in connection with various appeals to both the Fourth District Court of Appeal (the "4th DCA") and the Florida Supreme Court.
4. Rulings by the Florida Supreme Court and the 4th DCA have resolved all of the challenges brought by the Injunction Plaintiffs.² As such, the parties believe the Litigation (other than Count I for inverse condemnation) should be dismissed with prejudice.
5. The parties hereto disagree as to which side, if either, has been the prevailing party in this Litigation and its attendant appeals, for purposes of taxing trial and appellate costs.
6. SB 2484 (the "New Warrant Law"), which provides additional search warrant powers in connection with the CCEP, was recently signed into law. The New Warrant Law raises new issues not substantially related to any claims in the Litigation and, as such, any challenge to the New Warrant Law should properly be brought in a separate lawsuit which would not be appropriately consolidated or tried with any of the claims in the Litigation.
7. The Governmental Injunction Plaintiffs lack standing to challenge the New Warrant Law (*Florida Dept. of Agriculture v. Miami Dade County*, 790 So.2d 555 (Fla. 3rd DCA 2001)), and therefore cannot challenge its constitutionality, validity or implementation. The Non-

² Claims brought to enforce governmental tree canopy ordinances are no longer viable due to a direct conflict created by the New Warrant Law (as defined below).

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Governmental Injunction Plaintiffs do not desire to and will not challenge the constitutionality, validity or implementation of the New Warrant Law, except with regard to any search warrant(s) or warrant application(s) expressly directed at or covering their own property where such challenge does not seek declaratory or injunctive relief and is limited to a request to void a previously issued warrant or to deny a request to issue a warrant directed at or covering that Non-Governmental Injunction Plaintiff's own property.

8. Because all issues raised by any or all of the Injunction Plaintiffs in the Litigation have been resolved to the full extent permitted by the Florida Supreme Court and the 4th DCA, the Injunction Plaintiffs and the Department hereby jointly move the Court to enter an order dismissing all of the Injunction Plaintiffs' claims in the Litigation with prejudice (other than any claim for inverse condemnation in Count I), in the form attached hereto as Exhibit "1".

9. Each side (the Injunction Plaintiffs and the Department) shall bear its own costs and attorneys' fees incurred in connection with the Litigation (other than any claim for inverse condemnation in Count I) and in connection with all related appeals before the 4th DCA and the Florida Supreme Court. Nothing in this Stipulation shall prevent the Department from moving to tax attorneys' fees or costs against any plaintiff to the Litigation which is not a party to and bound by this Stipulation. Moreover, if any party to this Stipulation breaches any of its terms, nothing in this Stipulation shall prevent any other party to this Stipulation from seeking to enforce that term of the Stipulation.

10. Except as expressly stated below, no Injunction Plaintiff shall directly or indirectly initiate or participate in, or expend funds in support of, any judicial or administrative proceeding seeking to (i) enjoin, delay, prevent or limit implementation of the Canker Law or the New Warrant Law, (ii) challenge the validity or constitutionality of the Canker Law or the New

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Warrant Law, or (iii) prevent, delay or oppose the issuance of search warrants or agriculture warrants in furtherance of the CCEP. However, nothing in this Stipulation shall affect the right of any Injunction Plaintiff to:

- a. Respond as may be required by law to requests for public records under Chapter 119, Florida Statutes;
- b. Raise any claim or argument in any lawsuit or proceeding, individual or class action, in any capacity (including a representative capacity), to the extent the relief requested by that Injunction Plaintiff is limited to a request to obtain compensation for the destruction of trees³;
- c. Seek to prevent the removal of trees from property owned by that particular Injunction Plaintiff (but from no other property) by (i) appealing an immediate final order ("IFO") expressly directed at that property, or (ii) seeking a judicial order that trees on that particular property not be removed less than 10 days after delivery of an IFO to that property if (but only if) the Department has physically entered that property to commence to remove trees from that Injunction Plaintiff's property less than 10 days after delivering an IFO to that property, so long as no other or broader relief is requested. This Stipulation does not preclude an Injunction Plaintiff from raising any factual, constitutional, legal or scientific claim(s) in challenging an IFO expressly directed at property owned by that Injunction Plaintiff, but any such claim(s) shall be limited to that particular IFO challenge and to that particular property;
- d. Challenge the legality or constitutionality of any search warrant or agriculture warrant (or the execution thereof) expressly directed at (or covering) property owned

³ Nothing in this Stipulation shall affect the right of any party to seek and obtain an award of litigation costs and attorneys' fees (if available) to the extent those costs or fees were or are incurred in seeking compensation for the destruction of trees.

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by that particular Injunction Plaintiff, so long as the scope of that challenge is limited to that particular warrant, and does not challenge any other warrants or warrant applications, or seek declaratory or injunctive relief which would apply to any other party or property;

e. Challenge (if it is a Governmental Injunction Plaintiff) an attempt to enter or entry upon public property owned or controlled by that Governmental Injunction Plaintiff as part of the Department's implementation of the CCEP without having obtained an agriculture or search warrant where consent has not been obtained, so long as the scope of that challenge is limited to that particular attempt to enter (or entry upon) that particular public property owned or controlled by that particular Governmental Injunction Plaintiff, does not challenge any entry or attempted entry onto any other property, and does not seek declaratory or injunctive relief which would apply to any other party or property. This Stipulation does not preclude the Department from disputing that it is required to obtain any such warrant before entry onto public property;

f. Challenge implementation of the Canker Law or New Warrant Law, and seek any available relief (including but not limited to injunctive, declaratory or administrative relief), to the extent such challenge is based on and limited to an alleged policy or practice (as opposed to isolated errors) of the Department of (i) failing to deliver agriculture or search warrants before entering onto property owned by a non-governmental private party where consent has not previously been obtained, or (ii) removing trees from a property without having delivered to that property an immediate final order at least 10 days earlier; and/or

g. Seek any available relief, including but not limited to injunctive, declaratory or administrative relief, with regard to any administrative rule or statute relating to the CCEP which is enacted after the execution of this Stipulation.

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Respectfully submitted this ____ day of June, 2004.

**FOR THE FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES:**

GREENBERG TRAUIG, P.A.
401 East Las Olas Boulevard
Suite 2000
Fort Lauderdale, Florida 33301
Telephone: (954) 768-8206
Facsimile: (954) 765-1477

By: _____
JEROLD I. BUDNEY
Florida Bar No. 283444

CITY OF PLANTATION

By: _____
Printed Name: _____
Title: _____
Date: _____

**Plaintiff Intervenor
BROOKS TROPICALS, INC.**

By: _____
Printed
Name: _____
Title: _____
Date: _____

BROWARD COUNTY

By: _____
Printed Name: _____
Title: _____
Date: _____

CITY OF POMPANO BEACH

By: _____
Printed
Name: _____
Title: _____
Date: _____

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