



COUNTY ATTORNEY'S OFFICE
MEMORANDUM

CCAO1

TO: Board of County Commissioners

THROUGH: Robert A. McMillan, County Attorney

FROM: Henry M. Brown, Assistant County Attorney *HMB*
Ext. 5736

DATE: February 17, 2003

SUBJECT: Recommendation to Appeal the Award of Attorney's Fees
Incurred in Obtaining An Award of Expert Fees
Seminole County v. Radosevich, et al.
Case No.: 99-CA-1558-13-L
County Road 427, Phase I
Road Improvement Project
Parcel Nos. 188/788/888

This condemnation case was tried during the week of February 5 – 8, 2001. The County achieved a very favorable jury verdict. The results of supplemental cost hearings have not been as favorable. This request to appeal addresses only one issue; the award of attorneys fees in the amount of \$6,200.00 incurred in obtaining an award of expert witness fees in a supplemental proceeding. Although the amount of the attorney's fees is relatively small, the legal principle is very important for future cases.

I BACKGROUND/CASE IN CHIEF

The valuation trial of this parcel resulted in a favorable jury verdict in the amount of \$94,743.00, substantially less than the owner's original expert opinions totaling \$351,000.00, and only approximately \$25,000.00 more than the County's value.

Due to the favorable jury verdict, the County was also successful in limiting statutory attorney fees to \$3,666.00 based on the benefit achieved. However, one expert was awarded expert fees of \$32,486.34. That award was unsuccessfully appealed on the basis that the expert had been retained on a contingent fee basis. The attorneys fees now in question were awarded for the attorney's effort to obtain that expert fee and do not include any fees for defending the County's unsuccessful appeal as those fees have already been agreed to and paid.

II LEGAL ISSUES

Attorney fees and expert fees are awarded in supplemental proceedings after the valuation case in chief is resolved. Florida's statutory law provides that the owners of property shall be reimbursed for attorneys fees and expert costs incurred during the valuation case. However, no statute authorizes attorney or expert fees incurred related to the pursuit of an award of the statutorily required attorneys fees or expert fees.

The legal principle is whether fees may be awarded in supplemental proceedings where the condemnee has no interest in the amount of the fee, the benefit of which inures solely to the attorney or expert witness. The County's position has consistently been that such fees are not payable under these circumstances.

The County's position has been upheld in three successful appeals:

A. Attorney's Fees For The Pursuit Of Attorney's Fees In A Supplemental Proceeding.

In 1996, the County successfully appealed this issue to the Fifth District. In *Seminole County v. Butler*, 676 So. 2d 451, 455 (Fla. 5th DCA 1996), the Court held that an attorney's time spent litigating an attorney's fee is not compensable since the condemnee has no interest in the amount of the fee, the benefit of which inures solely to the condemnees attorney.

B. Expert Witness Fees For Experts Who Testify In Support Of An Attorney Seeking Fees In A Supplemental Proceeding.

In 1998, the County successfully appealed this issue to the Fifth District. In *Seminole County v. Boyle Inv. Co.*, 719 So. 2d 1004 (Fla. 5th DCA 1998), the Court held that the trial court erred by awarding expert witness fees for experts who testified in support of the amount of attorney's fees to be awarded.

C. Expert Witness Fees For Experts Who Testify In Support Of An Expert Seeking Fees In A Supplemental Proceeding.

In 2002, the County successfully appealed this issue to the Fifth District. In *Seminole County v. Chandrinos*, 816 So. 2d 1241 (Fla. 5th DCA 2002), the Court held that the trial court erred by awarding expert witness fees for experts who testified in support of the amount of an expert's fee to be awarded.

This case represents the last possible variation of the issue: Attorney's fees for the pursuit of expert witness fees. No published appellate decision addresses this specific issue, however, the three cases mentioned above should be compelling precedent. Although the trial court disregarded them, we feel that the Fifth District Court will not.

III APPEAL ANALYSIS

The amount of money at issue (\$6,200.00) is of lesser importance than the principle involved and its impact on future cases. The three successful County appeals mentioned above have saved the County money in virtually every case since they were decided. Attorneys now must negotiate reasonable fees because pursuit of unreasonable fees will be at their own expense, not the County's. This final permutation of the fee equation should save the County much more over the long run than the amount at issue in this case. If this appeal is not successful, then the County must pay the \$6,200.00 and additional attorney's fees for the loss of the appeal. Appellate attorney's fees for a loss should not exceed \$26,000.00.

IV RECOMMENDATION

The record before the trial court presents this issue in clear and definite terms. This office recommends appealing the fee order to the Fifth District Court of Appeal.

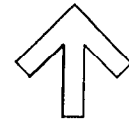
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PARCEL NO. 188 SUMMARY DATA
 PARENT TRACT AREA=0.855 AC. (37,232 S.F.)
 AREA OF TAKING=0.160 AC. (6,842 S.F.)
 AREA OF REMAINDER=0.698 AC. (30,390 S.F.)
 ZONING: M-1 (INDUSTRIAL)
 UNINCORPORATED SEMINOLE COUNTY

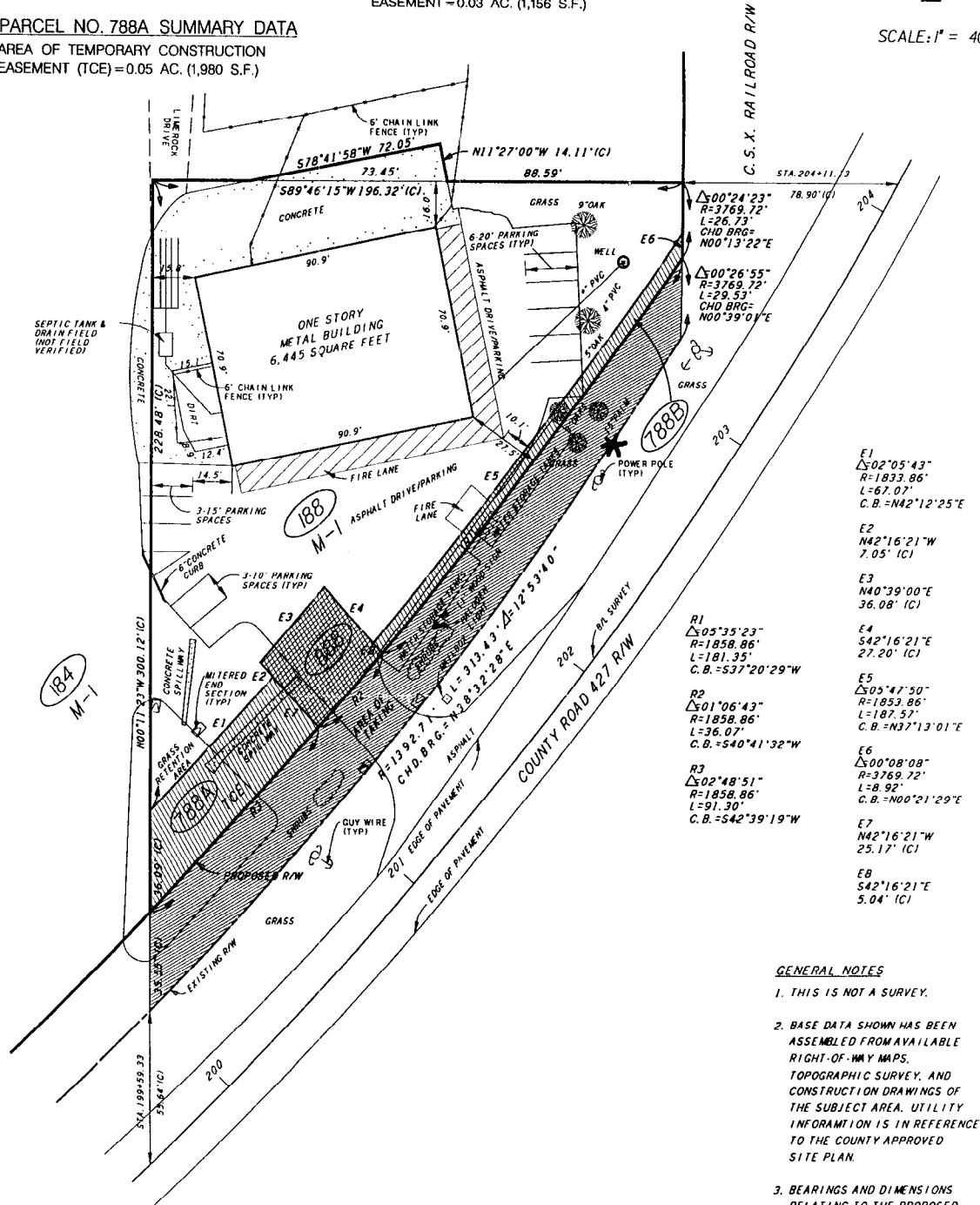
PARCEL NO. 788B SUMMARY DATA
 AREA OF TEMPORARY CONSTRUCTION
 EASEMENT (TCE)=0.02 AC. (922 S.F.)

PARCEL NO. 888 SUMMARY DATA
 AREA OF PERPETUAL
 EASEMENT=0.03 AC. (1,166 S.F.)

PARCEL NO. 788A SUMMARY DATA
 AREA OF TEMPORARY CONSTRUCTION
 EASEMENT (TCE)=0.05 AC. (1,980 S.F.)



SCALE: 1" = 40'



- E1 $\Delta 02^{\circ}05'43''$
R=1833.86'
L=67.07'
C.B.=N42°12'25"E
- E2 N42°16'21"W
7.05' (CI)
- E3 N40°39'00"E
36.08' (CI)
- E4 S42°16'21"E
27.20' (CI)
- E5 $\Delta 05^{\circ}47'50''$
R=1853.86'
L=187.57'
C.B.=N37°13'01"E
- E6 $\Delta 00^{\circ}08'08''$
R=3769.72'
L=8.92'
C.B.=N00°21'29"E
- E7 N42°16'21"W
25.17' (CI)
- E8 S42°16'21"E
5.04' (CI)
- R1 $\Delta 05^{\circ}35'23''$
R=1858.86'
L=181.35'
C.B.=S37°20'29"W
- R2 $\Delta 01^{\circ}06'43''$
R=1858.86'
L=36.07'
C.B.=S40°41'32"W
- R3 $\Delta 02^{\circ}48'51''$
R=1858.86'
L=91.30'
C.B.=S42°39'19"W

GENERAL NOTES

1. THIS IS NOT A SURVEY.
2. BASE DATA SHOWN HAS BEEN ASSEMBLED FROM AVAILABLE RIGHT-OF-WAY MAPS, TOPOGRAPHIC SURVEY, AND CONSTRUCTION DRAWINGS OF THE SUBJECT AREA. UTILITY INFORMATION IS IN REFERENCE TO THE COUNTY APPROVED SITE PLAN.
3. BEARINGS AND DIMENSIONS RELATING TO THE PROPOSED RIGHT-OF-WAY TAKINGS ARE AS SHOWN ON THE RIGHT-OF-WAY MAPS FOR CR 427, PHASE I.
4. THE "AREA OF TAKING" AND "TEMPORARY CONSTRUCTION EASEMENT" ARE IN REFERENCE TO OR CALCULATED FROM CR 427, PH I RIGHT-OF-WAY MAPS AND ROADWAY CONSTRUCTION PLANS.

LEGEND

- AREA OF TAKING
- TEMPORARY CONSTRUCTION EASEMENT
- AREA OF PERPETUAL EASEMENT

CR 427 (LONGWOOD AVE)

EXHIBIT B

TRANSPORTATION CONSULTING GROUP
 1205 ORLANDO AVE. SUITE 200 P.O. BOX 2541
 WINTER PARK, FLORIDA 32789
 OFFICE: (407) 828-0875 FAX: (407) 828-5773

PARCELS 188/788/888
 AFTER TAKING