TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney

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

DATE: May 22, 2003

SUBJECT: Authorization To Dismiss Appeal Previously Authorized
                by the Board of County Commissioners
                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 memorandum requests authorization to settle the appellate case by agreed dismissal of the appeal previously authorized by the Seminole County Board of County Commissioners (BCC). The total settlement sum would be $7,000.00 inclusive of the $6,200.00 awarded by the trial court in the order on appeal.

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 $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 limited benefit achieved. After a contested hearing one owner's expert was awarded a larger fee of $32,486.34. The County's appeal of that award was unsuccessful. Then the Court awarded $6,200.00 as attorney's fees incurred in the pursuit of that expert's fee.

This appeal was requested and authorized by the BCC based upon the Court's oral ruling on the single issue of payment of an attorney's fee incurred in the pursuit of payment of an expert's fee. Thereafter opposing counsel submitted a written order containing an additional finding (see paragraph II below). Although the County objected to inclusion of the additional finding, the Court agreed with opposing counsel and entered the requested written order. As the BCC had already authorized the appeal we

attempted to carry through with it despite the additional, complicating finding. After review, it appears that this case does not present the best record to test the issue that the BCC authorized for appeal.

II   LEGAL ISSUE ON APPEAL AND FINDINGS

The legal principle is whether attorney fees of $6,200.00 may be awarded in supplemental proceedings dealing with the amount of fees due to an expert, where the condemnee has no financial interest in the result of the supplemental proceedings.

In the present appeal, the trial court entered an order which contains a finding that the issue before the Court was an entitlement issue rather than the amount due. This is not consistent with prior rulings in the case. However, this finding presents a new issue that would have to be overcome before the Court could reach the real issue we wish to pursue. The appellate court could decide the case on the entitlement issue, enter an order adverse to the County and cloud the issue we want resolved.

For this reason, Staff recommends dismissal of this appeal, reserving the issue for a subsequent case not clouded by an extraneous finding such as that contained in this case.

III   STATUS OF THE APPEAL

The notice of appeal has been filed and the County is presently preparing the Initial Brief which is due July 7, 2003. Opposing counsel has done extremely little work to date.

IV   COSTS OF DISMISSAL

A dismissal requires that the County pay the principal sum of the prior order in the amount of $6,200.00. Also, appellate attorney's fees, statutory interest and costs presently total $800.00. Thus the settlement sum totals $7,000.00.

V   REASONING

As discussed in the Agenda Item of March 11, 2003, the amount of money at issue ($6,200.00) was of lesser importance than the legal issue involved. In view of the clouding of the issue by the finding of the court and the probability that a future case will present the issue again, Staff believes that it is better to settle this case at $800.00 above the principal of $6,200.00 and pursue the issue again in a subsequent case.

IV   RECOMMENDATION

This office recommends settlement of this appellate matter at $7,000.00.