



CCAD 1

**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *[Signature]*

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

CONCUR: Pam Hastings, Administrative Manager/Public Works Department *[Signature]*
Kathleen Myer, Principal Engineer/Engineering Division *[Signature]*

DATE: November 4, 2002

SUBJECT: Settlement Authorization
Dodd Road Project
Parcel No.: 105
Owners: David Roberts and Charlotte Roberts
Business: Kids Karousel, Inc.
Seminole County vs. Scott, et al.
Case No.: 01-CA-1901-13-W

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) for costs. The total settlement sum is \$46,918.67 allocated: (1) Costs negotiated at \$37,259.98; and, Attorneys fees at \$9,658.69 which is set by statute and not subject to negotiation.

I **PROPERTY**

A. **Location data**

Parcel No. 105 is a fee simple acquisition consisting of 325 s.f. of land area. The taking is a corner clip from the Roberts property which is improved with a residential unit and a daycare business known as Kids Karousel, Inc.

B. **Street Address**

The street address is 1521 Dodd Road.
A sketch is attached as Exhibit A.

A subject location map is attached as Exhibit B.

II BACKGROUND

In August, 2002, the BCC accepted an offer to have judgment entered at \$35,000.00 settling Parcel No. 105 as to land value, severance damage, business damage, and statutory interest. The BCC's acceptance was exclusive of attorney's fees and costs.

The owners had claimed a total of \$263,914.00 for land and business damages exclusive of attorney fees and costs. The County's land offer was \$5,731.25 with no marketing or business damage reports prepared. The settlement at \$35,000.00 was based on a cost avoidance analysis. The owners recovered 13% of their asserted claim. The settlement cut off costs and capped the attorney's fees at the statutory calculation.

III ATTORNEY FEES

One result of the BCC's acceptance of the owners offer of judgment is that the attorney fee reimbursement is set by statute and not subject to negotiation.

Statutory attorney fees are calculated:

1. Settlement at \$35,000.00 less the written offer of \$5,731.25 produces a benefit of \$29,268.75.
2. A benefit of \$29,268.75 at 33% produces a statutory attorney's fee of \$9,658.69.

IV COST CLAIM

The owners claimed costs totaling \$62,009.96. The costs were reported as follows:

(1) Appraisal Expert	\$18,293.00
(2) Engineering Expert	\$ 5,578.50
(3) Business Expert	\$18,698.83
(4) Marketing and Planning Expert	\$ 9,505.61
(5) Construction Estimate Expert	\$ 1,518.75
(6) Survey	\$ 3,100.00
(7) Exhibit Costs	\$ 2,405.27
<hr/>	
TOTAL COSTS	\$62,009.93

V NEGOTIATION

In negotiation, the County challenged the costs as bloated as to necessity, hourly rates, and number of hours. Also, the costs were challenged as out of proportion to the owners' recovery of only 13% of the asserted claim. Additionally, the County's recent

successful reported decision in *Chandrin* and its holding that experts do not recover additional costs in pursuit of the amount of expert fees was a key factor in negotiation. The owners responded by pointing out that the County had started this project three times and stopped it twice, with the owners incurring costs each time.

Negotiation resulted in a recommended cost reimbursement totaling \$37,259.98 as follows:

(1) Appraisal Expert	\$10,975.80
(2) Engineering Expert	\$ 5,147.10
(3) Business Expert	\$11,219.30
(4) Marketing and Planning Expert	\$ 5,703.37
(5) Construction Estimator Expert	\$ 911.25
(6) Survey	\$ 1,860.00
(7) Exhibit Costs	\$ 1,443.16

TOTAL NEGOTIATED COSTS	\$37,259.98
------------------------	-------------

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

Virtually all of the Dodd Road acquisitions have involved excessive costs. Repeated starts and stops to the project are expensive. In this case the claimed costs are reduced approximately 40% from \$62,009.96 down to \$37,259.98. At hearing, the County would be required to employ seven experts to challenge the reasonableness of costs. It is unlikely that costs in this case could be reduced by more than the 40% achieved by negotiation. It is likely that the cost of hiring experts to dispute the owner's experts would cost more than could be saved by pursuing a hearing.

VII RECOMMENDATION

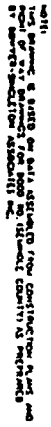
The statutory attorney fees are not negotiable and set at \$9,658.69. This office recommends settlement of this cost matter at \$37,259.98. The total settlement for attorney's fees and negotiated costs is \$46,918.67.

HMB/sb

Attachment:


Sketch Exhibit A

Location map Exhibit B



LEGEND

_____	PRIORITY 1A
_____	AV LOG
_____	PROPOSED SV
_____	PROPOSED TLE LOG
_____	DATA BY NAME



[illegible]

EXHIBIT A


SHEET: 2 PROJECT NAME: FILE NAME: .DWG	 <p> S&P Surveying & Planning 12345 Main St. Suite 100 Miami, FL 33101 Phone: (305) 123-4567 Fax: (305) 123-4568 </p>	<p>PA RENT TRACT : WITH TAKING SHOWN</p> <p>PARCEL 105</p> <p>DODD ROAD</p> <p>SEMINOLE COUNTY, FLORIDA</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">REVISIONS</th> <th style="text-align: left;">BY</th> <th style="text-align: left;">DATE</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table> <p style="text-align: center;">SCALE : AS SHOWN</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">DRAWN BY</td> <td style="width: 50%;">APPROVED BY</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td>CHECKED BY</td> <td>DATE</td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	REVISIONS	BY	DATE																															DRAWN BY	APPROVED BY			CHECKED BY	DATE		
REVISIONS	BY	DATE																																										
DRAWN BY	APPROVED BY																																											
CHECKED BY	DATE																																											



EXHIBIT B