



CCA04

**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
Kathleen Myer, Principal Engineer/Engineering Division *[Signature]*

Date: October 25, 2002

Subject: Settlement Authorization on Appellate Attorney Fees
Howell Branch Road Phase II
Parcel Nos. 1061706
Owners: Grace Properties, No. 7, LTD.
Seminole County v. Grace Properties, No. 7, LTD., et al.
Case No.: 5D01-3001

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) for appellate attorney fees. The total settlement sum is \$17,225.00.

I PROPERTY

A. Location Data

Parcel No. 106 is a fee simple acquisition consisting of a strip of about 35 feet in depth along the north side of Howell Branch Road Phase II. Parcel No. 106 consists of 5,050 square feet.

Parcel No. 706 is a temporary construction easement containing 1,939 square feet near the drive entrance.

B. Street Address

The parent tract is improved with a 122 unit apartment complex known as the Red Lion Apartments. The street address is: 1955 Howell Branch Road, Casselberry, Florida.

II BACKGROUND

This case went to jury trial during the week of July 23 -26, 2001.

The owner's initial value was \$965,000.00. The County reduced the owner's valuation by prevailing on motions in limine. The owners put a total value of \$468,000.00 before the jury. The County's total appraised value was \$112,300.00.

Parcel Nos. 106/706 went to trial with four (4) issues presented: (1) Value of Parcel No. 106; (2) Value of Parcel No. 706; (3) Mitigated Severance Damages (Cost to Cure); and, (4) Unmitigated Severance Damages. A jury verdict resulted in the following amounts: (1) Value of Parcel No. 106 - \$32,100.00; (2) Value of Parcel No. 706 - \$2,000.00; (3) Mitigated Severance Damages \$15,700.00; and, (4) Unmitigated Severance Damages - \$215,400.00 for a total jury verdict of \$265,200.00.

On appeal, four legal errors were argued: (1) contingent: fee expert witnesses; (2) denial of cross examination on monetary incentives of witnesses; (3) denial of the use of rebuttal witnesses; and, (4) damages from the project as a whole. The judgment was affirmed on appeal creating the entitlement to appellate attorney fees.

III APPELLATE ATTORNEYS FEE CLAIM

Before the Fifth District Court of Appeal, the owner claimed 68.9 hours defending the appeal at a rate of \$250.00 per hour. The total appellate attorney's fee claim is \$17,225.00.

IV SETTLEMENT ANALYSIS/COST AVOIDANCE

The claimed appellate attorney fee of \$17,225.00, for this four issue appeal, is reasonable. This is the lowest number of hours for an appeal and the lowest hourly rate in recent memory.

By comparison, the recent *Radosevich* case, a single issue appeal, resulted in an appellate attorney fee totaling \$26,223.09 based on a total of 93.4 hours at a principal attorney rate of \$300.00 per hour and an associate rate of \$200.00 per hour.

In order to dispute this claim the County would be required to present expert testimony showing that the appeal could have been done in fewer hours or at a lower rate. In all candor, we doubt that any reputable appellate lawyer would render either opinion, as we believe the claim to be reasonable.

V RECOMMENDATION

This office recommends settlement of this appellate attorney's fee matter at \$17,225.00.

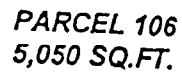
VI NEGOTIATION

The appellate fee request was reasonable.

HMB/sb

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LOCATION MAP



PARCEL 706
1,939 SQ.FT.

**FOR VISUAL AID
NOT TO SCALE**

LANDS AS DESCRIBED IN
O.R.B. 1962, PG. 0317

