

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20021429

1. REQUESTED MOTION:

ACTION REQUESTED: Execute Settlement Agreement between School Board and Nassant & Company, et al.

WHY ACTION IS NECESSARY: Attorney representing the School District of Lee County requested that the Board of County Commissioners acknowledge the Settlement Agreement and collect school impact fees on residential development within the parcel covered by the agreement.

WHAT ACTION ACCOMPLISHES: Confirms that residential development on a 126-acre parcel within the T&T DRI is subject to the payment of school impact fees.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # 5

C12A

3. MEETING DATE:

1/14/03

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
 - B. DEPARTMENT County Attorney
 - C. DIVISION Land Use
- BY: *Donna Marie Collins*
Donna Marie Collins
Assistant County Attorney

7. BACKGROUND:

The School Board of Lee County filed a suit for declaratory relief related to the imposition of school impact fees on residential development within the Timberland & Tiburon (T&T) DRI. The basis for this suit centers around the interpretation of a 1987 agreement between the School Board and the original developers of T&T and the status of a \$324,000.00 payment made pursuant to the agreement.

The T&T DRI was first approved for development in 1985. The development approvals have subsequently been amended seven times. The most recent amendment added 126 acres (Humphrey Parcel) to the project. The zoning approvals on that parcel anticipate development as a residential community. Nassant & Company is the contract vendee of the 126-acre parcel. Nassant has proposed a settlement with the School Board acknowledging that the 126-acre parcel is not subject to the 1987 agreement

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8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>Timothy one</i>	OA <i>RK</i> 12/27	OM 1/2/03	RISK <i>12/30</i>	GC <i>1/2/03</i>	<i>M. H. ...</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.
FORWARDED TO:
12/27/02
9:30 a.m.

RK
12-27-02
9:40
COUNTY ADMIN.
FORWARDED TO: *BH*
12-27-02

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Subject: Execute Settlement Agreement between School Board and Nassant & Company, et al

between the original developer of T&T and the School District. In addition, the settlement agreement provides that all residential development within the 126-acre parcel will be subject to the Lee County School Impact Fee Ordinance.

The attorney representing the School Board has requested that the Board of County Commissioners execute the agreement to acknowledge the party's intent to settle.

Staff recommends that the Board sign the agreement.

Attachment: Settlement Agreement in the matter of the School Board of Lee County, Florida, v. Nassant & Company, LLC
Lee County Circuit Court Case No. 02-008776-CA

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CIVIL ACTION

CASE NO. 02-008776 CA

THE SCHOOL BOARD OF LEE COUNTY,
FLORIDA,

Plaintiff,

vs.

NASSANT & COMPANY, LLC., as General
Partner of UNIVERSITY HIGHLAND LIMITED PARTNERSHIP,
and FLORIDA DEVELOPMENT PARTNERS, L.C.,

Defendants.

SETTLEMENT AGREEMENT

Plaintiff, THE SCHOOL BOARD OF LEE COUNTY, FLORIDA ("SCHOOL BOARD"), and Defendant, FLORIDA DEVELOPMENT PARTNERS, L.C. ("FDP"), joined by LEE COUNTY, FLORIDA ("LEE COUNTY"), hereby agree as follows:

WHEREAS, the SCHOOL BOARD has filed suit for declaratory relief related to the imposition of school impact fees on the residential units being developed as part of the Timberland and Tiburon Development of Regional Impact ("T & T DRI").

WHEREAS, LEE COUNTY initially approved the T & T DRI, pursuant to Section 380.06, Florida Statutes, on November 15, 1985, and since that date has approved seven (7) Amendments to the T & T DRI.

WHEREAS, the Seventh Amendment to the T & T DRI approved by LEE COUNTY on September 16, 2002, added one hundred twenty-six (126) acres, more or less, known as the

“Humphrey Parcel” to the T & T DRI, rezoned the Humphrey Parcel from “agricultural” to “MPD”, and which allows residential units to be constructed on the Humphrey Parcel. The Humphrey Parcel is identified and described in the legal description attached hereto and incorporated herein as Exhibit “A”.

WHEREAS, Defendant, FDP is the contract vendee of the Humphrey Parcel. On August 29, 1985, the then developer and owner of the T & T DRI, entered into a Contract with the SCHOOL BOARD OF LEE COUNTY (hereinafter the “Contract”), which required the donation of land, or alternatively, the payment of funds, to the SCHOOL BOARD as mitigation of the T & T DRI’s impacts on the Lee County school system. The Contract was attached as Exhibit “E” to, and constitutes a part of, the T & T DRI Development Order, as Amended.

WHEREAS, in April, 1987, the T & T DRI developer paid Three Hundred Twenty-Four Thousand Dollars (\$324,000.00) to the SCHOOL BOARD, and in January, 1997, LEE COUNTY amended (for the fourth time) the T & T DRI Development Order to state that the payment of Three Hundred Twenty-Four Thousand Dollars (\$324,000.00) in April, 1987, was “full mitigation” for the educational impacts of the T & T DRI. The Fourth Amendment to the T & T DRI Development Order continued to incorporate the Contract as Exhibit “F”, which included the provision in Paragraph 5 of the Contract that states:

“Should the School Board institute a school impact fee which provides for the acquisition of a school site with impact fees, Timberland and Tiburon will be given credit for their donation.”

WHEREAS, on or about November 27, 2001, LEE COUNTY adopted a school impact fee ordinance (Ordinance 01-21), which requires the payment of school impact fees by applicants for residential building permits, in accordance with the terms and provisions of said Ordinance.

NOW, THEREFORE, in consideration for the sum of One Dollar (\$1.00), and other good and valuable consideration, including the promises set forth herein, the SCHOOL BOARD, FDP and LEE COUNTY do hereby agree as follows:

1. The Humphrey Parcel, hereinabove described, was not a subject of, nor is it affected by, the Contract between the SCHOOL BOARD and the T & T DRI developer.

2. Any impacts upon the Lee County school system resulting from the future residential units located on the Humphrey Parcel were not, nor are they now, included within or mitigated by the payment of Three Hundred Twenty-Four Thousand Dollars (\$324,000.00) by the T & T DRI developer to the SCHOOL BOARD in 1987.

3. All future residential units built upon the Humphrey Parcel shall be subject to Lee County Ordinance 01-21, as it may be amended. Specifically, FDP agrees that Humphrey Parcel is subject to the payment of school impact fees pursuant to Ordinance 01-21, and agrees that the Humphrey Parcel, and the residential units constructed thereon, are not subject to exemption from school impact fees pursuant to Section 2-412(8) of Lee County Land Development Code.

4. This Agreement shall be binding upon the successors and assigns of FDP, and shall otherwise bind the owners of any property within the Humphrey Parcel that may construct residential units and apply for building permits.

5. Upon the execution of this Settlement Agreement, it shall be filed in the above-styled lawsuit and, upon filing, the SCHOOL BOARD shall file a Notice of Dropping Party, and shall drop FDP as a defendant to this action pursuant to Rule 1.250(b), Florida Rules of Civil Procedure. The SCHOOL BOARD and FDP agree to each bear their own attorney's fees and costs incurred in this action with respect to the claims between them.

FLORIDA DEVELOPMENT PARTNERS, L.C.

By: _____
Print Name: _____
Title: _____
Date: _____

QUARLES & BRADY
Attorneys for Defendant, FLORIDA
DEVELOPMENT PARTNERS, L.C.
4501 Tamiami Trail North, Suite 300
Naples, FL 34103-3060
(239) 262-5959

By: _____
Print Name: _____
Florida Bar No. _____
Date: _____

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

By: _____
Print Name: _____
Title: _____
Date: _____

BECKER & POLIAKOFF, P.A.
Attorneys for Plaintiff, THE SCHOOL BOARD OF
LEE COUNTY, FLORIDA
13515 Bell Tower Drive, Suite 101
Ft. Myers, Florida 33907
239/433-7707

By: _____
Michael R. Whitt
Florida Bar No. 0725020
Date: _____

LEE COUNTY, FLORIDA

By: _____
Print Name: _____
Chairman, Lee County Board of County
Commissioners
Date: _____

Approved as to form: _____

LEE COUNTY ATTORNEY'S OFFICE

By: _____
Print Name: _____
Assistant County Attorney
Date: _____

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