

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

Blue Sheet No. 20040245

1. REQUESTED MOTION:

ACTION REQUESTED: Reject the attached settlement offer by East County Water Control District ("District") in the case of Lehigh Acres Lot Owners Association, Inc. v. District, Case No. 00-10398CA-WCM.

WHY ACTION IS NECESSARY: It is Board of County Commissioners' prerogative to act on offers of settlement in pending lawsuits.

WHAT ACTION ACCOMPLISHES: Rejects offer to settle claim and continues the litigation.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #

A12B

3. MEETING DATE:

03-16-2004

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** *[Signature]*
- B. DEPARTMENT** County Attorney
- C. DIVISION** Litigation
- BY:** John S. Turner
Assistant County Attorney

7. BACKGROUND: Lee County is an intervenor in the case of Lehigh Acres Lot Owners Association, Inc. v. East County Water Control District, Case No. 00-10398CA-WCM. This action is a challenge to the District's assessment of maintenance and operation taxes on the lot owners in the District. Lee County, as owner of the Hickey Creek Mitigation Park, objected to the assessments made by the District on its property. Lee County claims none of the improvements or the ongoing maintenance is beneficial to its property. The Lehigh Acres Lot Owners Association recently settled with the District and the District has offered the following to settle Lee County's claim: (1) payment of \$2,000; (2) the amount paid would not be designated as back assessments and the settlement agreement would specifically disclaim that the payment constitutes any such payment of back assessments; (3) the litigation would be dismissed with prejudice; (4) the dismissal agreement would be approved by the trial court. District claims that Lee County's claim should be dismissed since the original plaintiff has settled. Regardless of the ongoing dispute, it is recommended that the Board reject the proposed settlement and proceed with the litigation.

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
					OA	OM	RISK	GC	
N/A	N/A	N/A	N/A	<i>[Signature]</i>	<i>3/4/04</i>	<i>3/4/04</i>	<i>3/4/04</i>	<i>3/4/04</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.
FORWARDED
TO CO. ADMIN.
3/3/04

RECEIVED BY
COUNTY ADMIN: *[Signature]*
03/10/04
11:00 am
COUNTY ADMIN
FORWARDED TO: *[Signature]*
3/4/04
10:30 am



LEWIS, LONGMAN & WALKER, P.A.

ATTORNEYS AT LAW

*HELPING SHAPE
FLORIDA'S FUTURE[®]*

ERIC ASH
KRISTIN K. BENNETT
JODY LANE BROOKS
WILLIAM G. CAPIKO
MICHELLE DIFFENDERFER
ROBERT P. DIFFENDERFER
KENNETH W. DODGE
AMY M. DUKES
BRENNAL MALOUF DURDEN
ROSLYNN M. FERGUSON
WAYNE E. FLOWERS
JOHN W. FOREHAND
JOHN J. FUMERO
MELISSA GROSS-ARNOLD
KEVIN S. HENNESSY
BRUCE B. HUMPHREY
R. STEVEN LEWIS
TERRY E. LEWIS
JAMES W. LINN
ANNE LONGMAN
M. CHRISTOPHER LYON
DAVID E. RAMBA
KENNETH G. SPILLIAS
EDWIN A. STRINMEYER
GUENN E. THOMAS
STEPHEN A. WALKER

W. O. BIRCHFIELD
WALTER E. FOREHAND
OF COUNSEL

www.llw-law.com

Jacksonville Office
9428 Baymeadows Road
Suite 625
Jacksonville, Florida 32256
(904) 737-2020
Fax: (904) 737-3221

Tallahassee Office
Post Office Box 10788 (32302)
125 South Gadsden Street
Suite 300
Tallahassee, Florida 32301
(850) 222-5702
Fax: (850) 224-9242

West Palm Beach Office
1700 Palm Beach Lakes
Boulevard, Suite 1000
West Palm Beach, Florida
33401
(561) 640-0820
Fax: (561) 640-8202

February 26, 2004

WEST PALM BEACH

VIA TELEFACSIMILE

Mr. John Turner
Assistant County Attorney
LEE COUNTY
P.O. Box 398
Fort Myers, Florida 33902-0398

RE: Lehigh Lot Owners Association, Inc./Lee County v.
ECWD
Case No.: 00-10398-CA

Dear Mr. Turner:

This letter is to follow-up on our telephone conversation of this week after my presentation of the County's settlement suggestions to the District's Board at our executive session on Monday, February 23, 2004. We agreed that, in order to move the settlement discussions forward, it was advisable for me to place the District's proposal to the County in writing. This letter is thus sent in the context of settlement negotiations and as a settlement proposal and is privileged as such.

I have been authorized to present the following settlement proposal to the County on behalf of the District:

1. The District would pay to Lee County the sum of Two Thousand (\$2,000.00) Dollars;
2. The amount to be paid by the County to the District would not be designated as payment of back assessments and the settlement agreement would specifically disclaim that the payment constitutes any such payment of back assessments;
3. The litigation would be dismissed with prejudice, including the County's acknowledgment that so long as the District's engineers certify that the County's properties do receive a benefit for which the assessment of maintenance and operation taxes is appropriate, the

Mr. John Turner
Assistant County Attorney
Lee County
February 26, 2004
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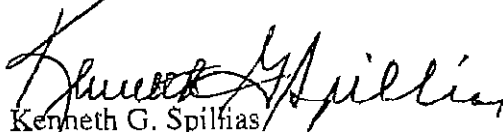
County will acknowledge the District's right to assess the property thusly. The County would, at all times, retain the right to challenge the amount actually assessed;

4. Inasmuch as the District has challenged the trial court's subject matter jurisdiction over the present case, and if the District is correct the trial court has no subject matter jurisdiction over the case, the settlement agreement between the County and the District would provide that, irrespective of the trial court's authority to enter an Order accepting the settlement agreement, the settlement agreement would be a separate and independent contract between the County and the District, independently enforceable as such.

Kindly present this proposal to your Board and provide me with your response at your earliest opportunity. I have not, at this point, been given a deadline by which a response would be required; however, I will be reporting back to the District Board at its next meeting on March 22, 2004 and it would expect to have had a response prior to that date. If I am directed to provide the County with any particular deadline for acceptance of the proposal prior to that date, I will so notify you.

Please be advised that I will be out of the office during the week of March 1, 2004 and will return to the office on March 8, 2004.

Sincerely,


Kenneth G. Spilias

KGS:har

Cc: David Lindsey
Angela Hill, Esq.

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