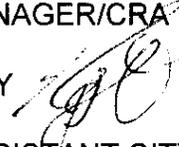

MEMORANDUM

TO: GREGORY J. ORAVEC, CITY MANAGER/CRA DIRECTOR

THRU: ROGER G. ORR, CITY ATTORNEY 

FROM: AZLINA GOLDSTEIN SIEGEL, ASSISTANT CITY ATTORNEY 

DATE: SEPTEMBER 12, 2012

SUBJECT: PROPOSED SETTLEMENT OF ATTORNEY'S FEES AND COSTS FOR
EMINENT DOMAIN CASE OF CITY OF PORT ST. LUCIE v. DAVID DUBOV
PSL CITY and JOAN DUBOV, et. al.

As you are aware, I have been working on negotiating a settlement of attorney's fees and costs concerning the above-referenced eminent domain case. The City instituted the subject condemnation proceeding, City of Port St. Lucie vs. David and Joan Dubov, et al., Case Number 562007000881AXXXHC, where property was taken for the construction of roadway improvements and all attendant facilities for the I-95 and Crosstown Parkway Interchange Project. The property taken was a small portion, 912 square feet, of a 20,181 square foot property that is zoned institutional with a special exception use for the operation of a cell tower. The subject property is owned by David and Joan Dubov and leased to AT&T for the operation and maintenance of wireless communications facilities upon the premises.

A valuation trial was held in this case. The amount of compensation that the Dubovs were seeking at trial was \$219,681.00. The jury, after having been duly empanelled and sworn to try and assess what compensation shall be made to the Dubovs for the property taken, and after having heard the evidence and the charges of the Court, rendered a verdict in the amount of \$65,820.00 on April 26, 2011. Following the Court's entry of the Final Judgment based on the jury verdict, the attorney representing the Dubovs, Fred W. van Vonno, Esq. of the law firm Fox, Wackeen, Dungey, Beard, Bush, Goldman, Kilbride & McCluskey, L.L.P., filed a Motion to Tax Attorney's Fees and Costs and an Amended Motion to Tax Attorneys' Fees and Costs on Counterclaim in Inverse Condemnation, for services performed and costs incurred on behalf of the Dubovs.

Under Florida law, property owners are entitled to recover attorney's fees, expert fees and other reasonable costs incurred in defending against eminent domain proceedings. A property owner's rights to recover such fees and costs are governed by Chapter 73 of the Florida Statutes. The expert fees and taxable costs sought in this case by the Dubovs totaled \$47,375.35, exclusive of attorney's fees.

However, this case also involved a counterclaim in inverse condemnation, for which the City and the Dubovs entered a Joint Stipulation and Agreed Order for Summary Judgment. The Dubovs were the prevailing party in the inverse condemnation action and are therefore entitled to recover additional compensation for the reasonable attorney's fees, expert fees, and costs

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incurred for said action. The expert fees and costs sought by the Dubovs for the counterclaim in inverse condemnation totaled \$6,074.35, exclusive of attorney's fees. Thus, the total amount for expert fees and costs that the Dubovs are currently seeking is \$53,449.70.

I have been able to negotiate a proposed settlement of \$37,691.75, which the parties agree would be in full payment for and settlement of any and all reasonable expert fees and taxable costs incurred on behalf of the Dubovs, including but not limited to the counterclaim in inverse condemnation. If the City and the Dubovs cannot agree on the amount to be awarded for expert fees and costs, then the matter will have to be settled by the Court and the City will be exposed to any attorney's fees and costs incurred for that supplemental proceeding. Further, it should be noted that over twenty-five percent (25%) of the expert fees and costs that the Dubovs were seeking to be paid by the City would not be considered "negotiable" and the payment of which would have been enforced by the Court. Therefore, the Legal Department recommends approval of said settlement amount \$37,691.75 for the Dubovs' expert fees and costs.

With respect to the award of attorney's fees in eminent domain cases, the amount is based on the benefits achieved by the attorney for his/her client pursuant to Section 73.092 of the Florida Statutes. As used under this section of the statute, the term "benefits" is defined as "the difference, exclusive of interest, between the final judgment or settlement and the last written offer made by the condemning authority before the defendant hires an attorney. If no written offer is made by the condemning authority before the defendant hires an attorney, benefits must be measured from the first written offer after the attorney is hired." More specifically, the statute provides a schedule for calculating the award of attorney's fees based on the "monetary" benefits achieved.

Initially there was a dispute between the parties concerning the offer or which portion thereof should be used for calculating the "monetary" benefits achieved by the attorney for the Dubovs. According to the Defendant Dubovs' Motion to Tax Attorney's Fees and Costs, the amount being sought for attorney's fees is \$18,043.41. However, counsel and I have finally been able to arrive at an agreement on the figures to use to calculate the benefits. Therefore, the parties have agreed that the award of statutory attorney's fees that Mr. van Vonno is entitled to be paid by the City, based on the benefits, is \$9,279.60.

In addition, as previously discussed, the Dubovs were the prevailing party concerning the counterclaim in inverse condemnation. Claims for attorney's fees concerning the inverse condemnation action and the achievement of non-monetary benefits have been made. Chapter 73 of the Florida Statutes does not provide a specific schedule for claims made for attorney's fees that are not based on monetary benefits and other types of proceedings related to the original condemnation action. Instead, the statute outlines a number of factors that a Court should consider when determining the amount to be assessed against the condemning authority for the payment of attorney's fees incurred. In general, an award of attorney's fees for supplemental proceedings and non-monetary benefits are based on hourly fees and rates that are customarily charged in the area for comparable legal services.

There was also a dispute between the parties concerning the entitlement and the amount to be awarded for attorney's fees for the inverse condemnation action. However, counsel and I have also been able to negotiate and agree on the reasonable amount of \$2,500.00 as the award to settle the claims made in this case for the other types of attorney's fees. To avoid the potential exposure to any further attorney's fees and costs incurred, the Legal Department recommends approval of the proposed total award of \$11,779.60 (\$9,279.60 + \$2,500.00), as full payment for and settlement of any and all claims for statutory or other attorney's fees incurred in this case on

behalf of the Dubovs, including but not limited to the counterclaim in inverse condemnation, by the attorney of record Mr. van Vonno and the law firm Fox, Wackeen, Dungey, Beard, Bush, Goldman, Kilbride & McCluskey, L.L.P.

Based on the foregoing reasons, I am seeking your approval to settle this post-trial aspect of the case for a total sum of \$49,471.35. Please see the attached proposed Joint Motion and Agreed Order on the Defendant Dubovs' Motion to Tax Attorney's Fees and Costs, and the Amended Motion to Tax Attorneys' Fees and Costs on Counterclaim in Inverse Condemnation. Should you provide me with your approval of the negotiated proposed settlement of any and all attorney's fees, experts fees, and costs for said sum of \$49,471.35, then Mr. van Vonno and I will be able to submit the attached Joint Motion and Agreed Order to the Court for entry and therefore be able to close out this eminent domain case. If you have any questions, please do not hesitate to contact me.

AGS/bb

Attachments: Joint Motion and Agreed Order

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IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT IN
AND FOR ST. LUCIE COUNTY,
FLORIDA

THE CITY OF PORT ST. LUCIE,
a Florida municipal corporation,

CASE NO. 562007CA000881AXXX4C

Petitioner.

vs.

CROSTOWN PARKWAY AT I-95 INTERCHANGE
PARCEL 25

DAVID DUBOV; JOAN DUBOV;
ST. LUCIE COUNTY TAX COLLECTOR;
AT&T MOBILITY, LLC, a Foreign limited
liability, FNA Cingular Wireless, LLC; and
UNKNOWN PARTIES IN POSSESSION
or claiming by, through, under, and against
the above named Defendant(s), or other
claimants,



Defendants.

JOINT MOTION AND AGREED ORDER
ON DEFENDANT DUBOV'S MOTIONS TO TAX ATTORNEY'S FEES AND COSTS

THIS MATTER having come before the Court upon the following Joint Motion and Agreed Order on the Defendant Dubovs' Motion to Tax Attorney's Fees and Costs, and the Amended Motion to Tax Attorneys' Fees and Costs on Counterclaim in Inverse Condemnation, for services performed and costs incurred on behalf of the Defendants, DAVID DUBOV and JOAN DUBOV (hereinafter "Defendant DUBOV'S"), and it appearing to the Court that the parties were authorized to enter into such Motion, and the Court having considered the matter, being fully advised in the premises, it is now, therefore,

ORDERED AND ADJUDGED that:

1. The Defendant DUBOV'S, the fee simple owners of Parcel No. 25 and the owners of the Access Easement, the subject property and real property interest taken in this condemnation action, are entitled to reasonable expert fees and taxable costs incurred in connection with the above-styled condemnation matter.

2. The Defendant DUBOVS shall have and recover of and from the Petitioner, the CITY OF PORT ST. LUCIE, a Florida municipal corporation (hereinafter "CITY"), the sum of THIRTY-SEVEN THOUSAND SIX HUNDRED NINETY-ONE DOLLARS AND SEVENTY-FIVE CENTS (\$37,691.75), which the parties agree is in full payment for and settlement of any and all reasonable expert fees and taxable costs incurred herein on behalf of the Defendant DUBOVS, including but not limited to the counterclaim in inverse condemnation.

3. The Defendant DUBOVS are entitled to recover the amount of ELEVEN THOUSAND SEVEN HUNDRED SEVENTY-NINE DOLLARS AND SIXTY CENTS (\$11,779.60), which amount the parties agree is reasonable and in full payment for and settlement of any and all claims for statutory or other attorney's fees, incurred herein on behalf of the Defendant DUBOVS, including but not limited to the counterclaim in inverse condemnation, by the attorney of record Fred W. van Vonno, Esq., and the law firm Fox, Wackeen, Dungey, Beard, Bush, Goldman, Kilbride & McCluskey, L.L.P.

4. Within thirty (30) days of receipt of a conformed copy of this Order, the CITY shall without further order of this Court, make payment directly to the Trust Account of Fox, Wackeen, Dungey, Beard, Bush, Goldman, Kilbride & McCluskey, L.L.P., Attn: Fred W. van Vonno, Esq., as attorney of record for the Defendant DUBOVS, The Tower Building at Willoughby Commons, 3473 S.E. Willoughby Boulevard, Stuart, FL 34994, the total sum of FORTY-NINE THOUSAND FOUR HUNDRED SEVENTY-ONE DOLLARS AND THIRTY-FIVE CENTS (\$49,471.35). Said sum represents the payment of any and all of the Defendant DUBOVS' claims for statutory and other attorney's fees, taxable costs and expert fees and costs pursuant to Chapter 73 of the Florida Statutes.

5. Upon receipt of the sum FORTY-NINE THOUSAND FOUR HUNDRED SEVENTY-ONE DOLLARS AND THIRTY-FIVE CENTS (\$49,471.35), Fred W. van Vonno, Esq., of Fox, Wackeen, Dungey, Beard, Bush, Goldman, Kilbride & McCluskey, L.L.P., shall

distribute the same, as appropriate, to the experts, other professionals or entities, and attorney(s) who provided services for and on behalf of the Defendant DUBOVS in this case.

DONE and ORDERED in Chambers at Ft. Pierce, St. Lucie County, Florida, this _____ day of _____, 2012.

HONORABLE DWIGHT L. GEIGER
CIRCUIT COURT JUDGE

Conformed Copies to:
All counsel and parties of record listed on the attached Service List

**JOINT MOTION FOR ENTRY OF AGREED ORDER
ON DEFENDANTS' MOTIONS TO TAX FEES AND COSTS**

Petitioner, CITY OF PORT ST. LUCIE, a Florida municipal corporation, and Defendants, DAVID DUBOV and JOAN DUBOV, by and through their respective, undersigned counsel hereby jointly move the Court for entry of the foregoing Agreed Order set forth above.

AZLINA GOLDSTEIN SIEGEL, ESQ.

Attorney for Petitioner

CITY OF PORT ST. LUCIE

121 S.W. Port St. Lucie Blvd.

Port St. Lucie, FL 34984

Telephone: (772) 873-6321

Facsimile: (772) 873-6335

Email: AGoldstein@cityofpsl.com

FRED W. VAN VONNO, ESQ.

Attorney for Defendants DUBOV

The Tower Building at Willoughby Commons

3473 SE Willoughby Boulevard

Post Office Drawer 5

Stuart, FL 34995

Telephone: (772) 287-4444

Facsimile: (772) 878-3814

Email: fvanvonno@foxwackeen.com

AZLINA GOLDSTEIN SIEGEL, ESQ.

Florida Bar No.: 0026106

Date: _____

FRED W. VAN VONNO, ESQ.

Florida Bar No.: 544159

Date: _____

SERVICE LIST

Fred W. van Vonno, Esq.
FOX, WACKEEN, DUNGEY, BEARD, BUSH
GOLDMAN, KILBRIDE & McCLUSKEY, L.L.P.
The Tower Building at Willoughby Commons
3473 S.E. Willoughby Boulevard
Stuart, FL 34994
fvanvonno@foxwackeen.com

Azlina Goldstein Siegel, Esq.
CITY ATTORNEY'S OFFICE
CITY OF PORT ST. LUCIE
121 S.W. Port St. Lucie Boulevard
Port St. Lucie, FL 34984
AGoldstein@cityofpsl.com

Henry S. Wulf, Esq.
CARLTON FIELDS, P.A.
CityPlace Tower
525 Okeechobee Boulevard, Suite 1200
West Palm Beach, FL 33401
hwulf@carltonfields.com

Doris G. Ferguson, Esq.
GENERAL COUNSEL
ST. LUCIE COUNTY TAX COLLECTOR
2300 Virginia Avenue
Ft. Pierce, FL 34982
dorisf@tclsc.com