

BOARD OF COUNTY COMMISSIONERS  
HILLSBOROUGH COUNTY, FLORIDA

AGENDA ITEM COVER SHEET

CHIEF DEPUTY CLERK

CONSENT

REGULAR

MEETING DATE: February 18, 1998

SUBJECT: Settlement Agreement related to Lake Grady Dam Lawsuits

OFFICE: County Attorney's Office *J.F. Theodore*

DEPT: Infrastructure

CONTACT PERSON: Guilène F. Theodore, Chief Assistant County Attorney

RECOMMENDATION:

A. That the Board approve the Settlement Agreement between Hillsborough County, the Lake Grady Road & Bridge District, and other parties to resolve the lawsuits styled Lake Grady Road and Bridge District v. Hillsborough County, Case #89-4736, and Cudlipp, et al. V. Hillsborough County et al., Case #93-7735, with no cash outlay from the County and

B. That the Board approve a Resolution authorizing conveyance of Real Property to the Lake Grady Road and Bridge District and authorizing staff to process the necessary documents to effectuate this conveyance.

BACKGROUND: (SEE ATTACHED)

Continued

Financial Impact Statement and Index/Sub-object Code: This transaction does not have a cash impact on the County budget; however, the average market value of each of the 41 lots that are being transferred to the Lake Grady Road and Bridge District is \$23,671 (\$970,500 total for the 41 lots).

Continued

*2/12/98*

DIRECTOR PUBW *DATE* *David J. Curran*

DIRECTOR REAL ESTATE DEPT *Michael Kelly*

MGMT & BUDGET *[Signature]* 2-10-98

CONTRACTS *N/A*

LEGAL *J. Theodore* Chief ACA *J. Theodore*

ACA *N/A*

Affected parties notified

Not required

Advertised

Not Required

Date:

Paper:

CIT Project?  yes  no

Attachments

1) Settlement Agreement w/Exhibits

None

Backup on file in County Administrator's Office

— OCA STAFF ONLY —

BOARD ACTION:  Approved  Disapproved  Continued/Deferred Until \_\_\_\_\_

OTHER/SPECIAL INSTRUCTIONS: \_\_\_\_\_

Original Documents forwarded to Chief Deputy Clerk

BY: *[Signature]*

BACKGROUND: (CONTINUED)

BACKGROUND OF DISPUTE:

The Lake Grady Dam is located within the Shadow Run Subdivision in Riverview, within Hillsborough County, with Shadow Run Boulevard, a county roadway on top of the bank of the impoundment structure.

The Shadow Run Subdivision includes property which was formerly a recreational lake. The lake was created when Lake Grady, Inc. constructed the Lake Grady Dam in the early part of 1969, and was meant to be a recreational and irrigation facility to serve the adjacent land owners. The lake was formed by impoundment of a portion of the Bell Creek and Pellam Branch Watersheds which are tributaries to the Alafia River.

In 1983, one of seven corrugated metal pipes within the structure of the dam collapsed, resulting in erosion of the existing bank surface on the upstream side. In 1985, the dam was repaired, only to experience another failure in 1987.

The repairs to the dam were undertaken by the Lake Grady Road and Bridge District, which assessed the members of the District for the cost of the repairs and entered into a contract with Housel & Associates as the engineer for the repairs and C. P. Ward Construction Company as the construction contractor.

After the dam's failure in 1987, the Lake Grady Road and Bridge District sued the engineer and the contractor for breach of contract, claiming that their negligent design and construction caused the failure of the dam. The Lake Grady Road and Bridge District also filed for bankruptcy court protection under Chapter 9.

In 1990, the Lake Grady Road and Bridge District sued Hillsborough County, claiming that the County owned the dam and had assumed responsibility for maintaining the dam. That same year, the County was brought in as a defendant in an adversary proceeding appended to the bankruptcy matter. That action, filed by a developer named Zaragosa, alleged that some lots within the Shadow Run Subdivision had improperly escheated to the County. The developer claimed that the escheatment process should have been stayed by the bankruptcy action.

In the Circuit Court proceeding, the District requested Declaratory Judgment, asking that the Court declare the duties and obligations of the County and Lake Grady Road and Bridge District with respect to the portion of Shadow Run Boulevard that runs over the dam and the duties and obligations with respect to the dam itself; and further, that the Court enter a judgment that the County has accepted the duty and obligation to maintain and repair that portion of the road and the underlying dam. The District also claimed a breach of contract and requested damages totaling the sums which Lake Grady Road and Bridge District has expended to maintain and repair the road and the underlying dam in the past. The District also requested specific performance of the County's alleged contractual obligation to maintain the road and maintain and repair the dam in the future.

In 1993, Cudlipp filed a Creditor's Suit against Hillsborough County claiming that it had been assigned the right to the Lake Grady tax receivables, and as a result, was entitled to receive those tax receivables from Hillsborough County. Cudlipp claimed in the alternative, that it was entitled to share in any tax recovery with Hillsborough on a pro-rata basis. Cudlipp requested that the court declare its rights as stated above, and grant an injunction against Hillsborough County on the basis that any further escheatment of properties were subject to the ad valorem tax claims of Lake Grady; Cudlipp also asked the court to direct the County to share the proceeds from the sale of those properties up to the amount of the tax receivables with Cudlipp.

## SYNOPSIS OF TERMS AND CONDITIONS OF SETTLEMENT AGREEMENT:

- ◆ The objective of the Settlement Agreement is to dismiss the pending lawsuits and provide for the restoration of Lake Grady Dam.
- ◆ The Agreement is to be executed by all the parties and forwarded to the Shadow Run Homeowners Association for approval within forty-five (45) days of last party's execution.
- ◆ Lake Grady Road and Bridge District will obtain quit claim deeds to the dam property from all the parties and the Shadow Run Homeowners' Association.
- ◆ Lake Grady Road Bridge District will have a period of time within which to determine whether it can quiet title to the dam property. If it cannot obtain reasonable assurances of proper title to the dam property, it may advise the parties of this and terminate the agreement.
- ◆ Once the District is satisfied of its ownership interest in the dam, the parties will dismiss the lawsuits. The agreement provides that they will not attempt to re-open the bankruptcy proceedings.
- ◆ The County will vacate the public roadway which is now located above the dam (the roadway is currently closed to vehicular traffic because of the failure of the dam which supports the roadway)
- ◆ The County will transfer ownership of forty-one (41) of the escheated lots to the Lake Grady Road and Bridge District so that the District may use the proceeds from the sale of the lots as a source of funding for the restoration of the dam.
- ◆ The County will delay the sale of its escheated lots for three (3) years from the date of SRHOA approval of the agreement, or until Lake Grady District has sold its lots, whichever is sooner.
- ◆ Lake Grady District will establish a Maintenance Fund as a reserve for maintenance expenses. It will have a minimum of \$50,000.00 in the Maintenance Fund before construction of the dam can begin. The Fund is to be increased to \$100,000.00 upon completion of the restoration of the dam.
- ◆ Once the dam restoration is completed and the Maintenance Fund increased to \$100,000.00, the District will turn over any excess funds to Cudlipp and Zaragosa.
- ◆ Lake Grady District will own the dam during the restoration process and will be in charge of designing and constructing the restoration of the dam. Thereafter, the District will convey ownership of the dam to the maintenance entity.
- ◆ In the event Lake Grady District is unable to complete the dam for valid reasons, then it is required to use the funds to demolish the dam, and thereafter disburse the funds as provided for in the agreement.
- ◆ In the event Lake Grady District fails to complete the dam arbitrarily, the County may ask the District to turn over the remaining funds to the County, and the County then has total discretion to use the money to either complete the restoration work or demolish the dam and if there are sufficient funds, construct a bicycle or pedestrian pathway. The County will then disburse the remaining funds in the manner provided for in the agreement.