

RESOLUTION NO. 03-126

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING AND AUTHORIZING THE PROPOSED STIPULATED SETTLEMENT AND JUDGMENT INCORPORATING STIPULATION OF SETTLEMENT OF THE MATTERS LOWELL DUNN AND BETTY DUNN V. TOWN OF MIAMI LAKES AND TOWN OF MIAMI LAKES V. LOWELL AND BETTY DUNN, PENDING BEFORE THE CIRCUIT COURT OF THE 11<sup>TH</sup> JUDICIAL CIRCUIT OF MIAMI-DADE COUNTY AND AUTHORIZING TOWN OFFICIALS TO EXECUTE THE SETTLEMENT DOCUMENTS; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a proposed Stipulated Settlement and Judgment Incorporating Stipulation of Settlement of the matters *Lowell and Betty Dunn v. Town of Miami Lakes* and *Town of Miami Lakes v. Lowell and Betty Dunn* pending before the Circuit Court of the 11<sup>th</sup> Judicial Circuit of Miami-Dade County (the "Matters") has been executed by Lowell and Betty Dunn and presented to the Town of Miami Lakes (the "Town"); and

WHEREAS, the Town Council finds that settlement of the Matters, is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

**Section 1. Recitals.** The foregoing Recitals are true and correct and are incorporated herein by this reference.

**Section 2. Approval of Settlement.** The proposed Stipulated Settlement and Judgment Incorporating Stipulation of Settlement of *Lowell and Betty Dunn v. Town of Miami Lakes* (Case No. 03-4009 CA 02) and *Town of Miami Lakes v. Lowell and Betty Dunn* (Case No.

03-04827 CA 32) pending in the Circuit Court of the 11<sup>th</sup> Judicial Circuit of Miami-Dade County, attached here as Exhibits "A" and "B," respectively, are hereby approved and the Town Manager is hereby authorized to accept and execute any other documents concerning this cause on behalf of the Town, subject to the approval of the Town Attorney as to form and legal sufficiency.

**Section 3. Authorization of Town Manager.** The Town Manager is authorized to implement the terms and conditions of the Stipulated Settlement and Judgment Incorporating Stipulation of Settlement agreements.

**Section 4. Effective Date.** This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 7<sup>th</sup> day of April, 2003.

Wayne Slaton  
Wayne Slaton  
MAYOR

ATTEST:

Beatris M. Arguelles  
Beatris M. Arguelles  
TOWN CLERK

Approved as to form and legality for the use and benefit of the Town of Miami Lakes only:

Weiss, Serota, Helfman, Pastoriza & Guedes, P.A.  
Weiss, Serota, Helfman, Pastoriza & Guedes, P.A.

Pizzi / Collins

Council voted	<u>5-2</u>	as follows:
Mayor Wayne Slaton	<u>Yes</u>	
Vice Mayor Roberto Alonso	<u>NO</u>	
Councilmember Mary Collins	<u>yes</u>	
Councilmember Robert Meador	<u>NO</u>	
Councilmember Michael Pizzi	<u>Yes</u>	
Councilmember Nancy Simon	<u>Yes</u>	
Councilmember Peter Thomson	<u>Yes</u>	

04/04/2003 15:46 3054606002

LAW OFFICE

PAGE 02/13

**JOSE M. HERRERA, P.A.**  
- ATTORNEY AT LAW -

1401 PONCE DE LEON BOULEVARD  
SUITE 200  
CORAL GABLES, FLORIDA 33134

TELEPHONE: (305) 445-1100  
FACSIMILE: (305) 460-6002  
E-MAIL: JMH@HERRERALAWFIRM.COM

April 4, 2003

**VIA FACSIMILE: (305) 854-2323**

Nina Boniske, Esq.  
Weiss Serota Helfman Pastoriza et al.  
2665 South Bayshore Drive  
Suite 420  
Miami, Florida 33133

**Re.: Dunn / Town of Miami Lakes**

Dear Ms. Boniske:

Enclosed are the two (2) Stipulations of Settlement containing all of the terms which were negotiated and agreed upon during our three (3) plus hour meeting on Thursday, April 3, 2003. I am transmitting the signed stipulations to you subject to the condition that both stipulations must be approved without any changes or there is no settlement.

To avoid any misunderstanding, the stipulations are interdependent, and unless both are approved as drafted, we do not have an agreement or settlement. Once the Council approves *both* stipulations, as drafted, we have an agreement, and we will move forward in a positive manner.

I think that the parties (the Dunns and the Town) desire to resolve all litigation and move forward toward mutually beneficial goals. This requires the approval and implementation of both stipulations. Anything less defeats the purpose of all of our efforts.

As you know, a lot of hard work went into negotiating the terms of the stipulations. Town Manager Alex Rey and Lowell Dunn, II, spent time negotiating the general terms, upon which you, Joe Serota, and I, based our initial written draft. This was followed by a lengthy conference during which Town Manager Rey, Dunn II, Stan Price, you and I hammered out the final version of the agreement. I am certain I speak for all concerned when I say that I trust that all of this effort and hard work should not be taken lightly or go to waste.

Finally, in light of the circumstances, unless we have signed stipulations and a counsel resolution approving the settlement no later than 9 a.m. Wednesday, April 9, 2003, all offers are

04/04/2003 15:46 3054606002

LAW OFFICE

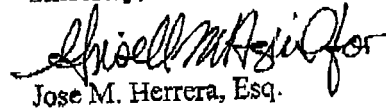
PAGE 03/13

*Letter to Nina Boniske, Esq.  
April 4, 2003  
RE: Dunn / Town of Miami Lakes  
Page 2*

withdrawn, and all of our efforts and hard work will have been for not.

Please do not hesitate to call me if you have any questions or concerns.

Sincerely,



Jose M. Herrera, Esq.

Enclosures

04/04/2003 15:46 3054506002

LAW OFFICE

PAGE 04/13

3

**IN THE CIRCUIT COURT OF THE 11<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION**

CASE NO.: 03-4009 CA.02

**LOWELL DUNN and  
BETTY DUNN**

**PETITIONERS,**

**VS.**

**THE TOWN OF MIAMI LAKES, a  
municipal corporation,**

**RESPONDENTS**

**STIPULATED SETTLEMENT  
AND  
JUDGMENT INCORPORATING STIPULATION OF SETTLEMENT**

The Parties to the above styled action, LOWELL DUNN and BETTY DUNN (the "DUNNS"), as Plaintiffs, and TOWN OF MIAMI LAKES ("TOWN"), as Defendant, having reached an amicable resolution to their pending dispute, hereby agree and stipulate as follows:

1. The \$57,279.11 paid by the Dunns to the Town shall be deemed payment in full for the waiver, rezoning, comprehensive development master plan amendment and the reformation pursuant to Application No. 02-01.
2. There shall be no credits or refunds of any kind due to the Dunns from the amount already paid to the Town.

04/04/2003 15:45

3054606002

LAW OFFICE

PAGE 05/13

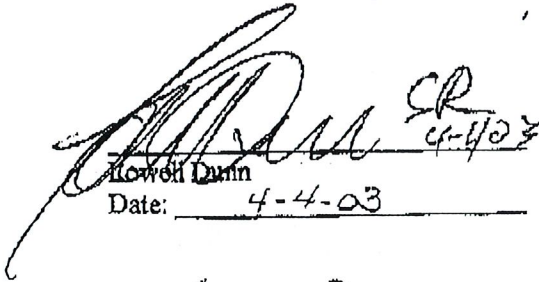
3. The Town shall not impose or demand any additional costs or fees to complete the Reformation process for the 156 acre site.
4. The Town shall correct the technical error at a reformation hearing pursuant to section 33-315.1 of the Town Code.
5. In accordance with Section 33-315.1 of the Town Code, the Town shall process the Application for Reformation filed by the Dunns on November 7, 2002, to correct the legal description for the property specified in Ordinance No. 02-26, including the correction of the legal descriptions contained in any exhibits to the Ordinance. Modification of the Declaration to effect the intent of this paragraph shall be made in accordance with Paragraph 21 of the Declaration. The Town shall process the Application for Reformation within 30 days of the Council approval of this document.
6. Notwithstanding the provisions of Paragraph 17 of the Declaration of Restrictions, attached as Exhibit F to Town Ordinance No. 02-26, (the "Declaration") the Dunns shall extend the irrevocable option for the Miami-Dade County Fire Department to purchase the Fire Department Site specified in Paragraph 17(a) of the Declaration until June 15, 2003. Modification of the Declaration to effect the intent of this paragraph shall be made in accordance with Paragraph 21 of the Declaration.
7. If the Town fails to fulfill its obligation under this stipulation, specifically to correct the technical error and Reformation process, within the time specified, the Dunns shall provide written notice to the Town, setting forth the matter and requesting compliance. The Town Manager no later than seven (7) working days after receiving notice, shall confer with the Dunns, in a good faith effort to seek an acceptable resolution.


- 8. Notice and conference, or notice and a good faith effort to confer, shall be a condition precedent to seeking judicial enforcement. (Good faith effort to confer shall mean a diligent effort to schedule a conference within the seven (7) working day period.)
- 9. The court shall retain jurisdiction to enforce this stipulation, and the aggrieved party shall have the right to seek judicial enforcement after complying with the notice and conference provisions as provided in paragraphs 7 and 8.
- 10. The above styled action shall be dismissed, each party to bear their respective fees and costs.
- 11. The parties acknowledge and agree as follows:
  - A. This stipulation/agreement represents a mutual compromise by the parties, and is the result of a mutual good faith effort to amicable resolve the matters at issue and foster cooperation between the parties for the benefit of the residents of the Town, while avoiding the expense and inconvenience associated with litigation.
  - B. The parties acknowledge that they each have denied, contested, and otherwise challenged the validity and merits of both the factual and legal basis of the claim asserted by the other.
  - C. This stipulation does not constitute nor be construed as any form of admission of wrong doing, fault, or liability by either party, nor as any form of admission that the position taken or claim asserted by either party is/was legally or factually meritorious.
  - D. This stipulation shall apply only to the resolution of the specific controversy and matters at issue between the named parties in this


case, and inures only to the benefit of the parties to this agreement and their respective assigns:

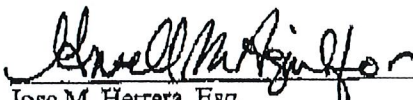
E. This stipulation shall have no force or effect as to any future dispute between the parties arising out of any other factual or legal matter or dispute.

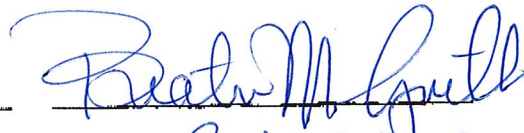
F. This stipulation shall not be admissible in any other proceeding, nor shall either party be estopped in any manner by virtue of this stipulation nor shall this stipulation constitute a waiver of any matter not specifically enumerated herein, and neither party shall be precluded in any manner from asserting or raising any factual or legal matter of a similar nature in the future.

  
Howard Dunn  
Date: 4-4-03

  
Town of Miami Lakes  
By Alex Rey, Town Manager  
Pursuant to Resolution 03-126  
Date: April 8, 2003

  
Betty Dunn  
Date: 4-4-03

  
Jose M. Herrera, Esq.  
Date: 4-4-03

  
Date: April 8, 2003



**JUDGMENT**  
**APPROVING AND INCORPORATING STIPULATION OF SETTLEMENT**

THIS CAUSE having come before the Court on this \_\_\_\_ day of \_\_\_\_\_, 2003, upon the parties' Stipulation of Settlement resolving certain pending matters, and the Court having considered said stipulation, and being otherwise advised in the premises, it is hereupon,

ORDERED AND ADJUDGED that the foregoing stipulation of the parties is hereby approved and adopted as an order of this Court.

The Court retains jurisdiction to enforce the provisions of the forgoing stipulation.

DONE AND ORDERED at Miami-Dade County, Florida this \_\_\_\_ day of March, 2003.

**HONORABLE RONALD FRIEDMAN**

cc: Joseph Serota, Esq.  
Nina L. Boniske, Esq.  
Jose M. Herrera, Esq.

3

IN THE CIRCUIT COURT OF THE 11<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 03-04827 CA 32

THE TOWN OF MIAMI LAKES,  
a municipal corporation,

PLAINTIFF,

VS.



LOWELL DUNN and  
BETTY DUNN

Defendants /

**STIPULATED SETTLEMENT  
AND  
JUDGMENT INCORPORATING STIPULATION OF SETTLEMENT**

The Parties to the above styled action, TOWN OF MIAMI LAKES ("TOWN"), as Plaintiff, and LOWELL DUNN and BETTY DUNN (the "DUNNS"), as Defendants, having reached an amicable resolution to their pending dispute, hereby agree and stipulate as follows:

1. The Dunns shall lower the muck piles at the 156 acres site to a height of no more than ten feet (10') from the existing grade on the property.
2. The Dunns will seed the lowered muck piles with grass seeds. The Town Manager shall monitor the lowering and the seeding of the muck piles. The Dunns shall implement reasonable dust control measures to minimize airborne dust/particles and dust during the lowering and seeding process. The lowered muck piles will not be disturbed without the Dunns employing reasonable dust control measures.
3. The Dunns shall commence to lower and seed the muck piles within five (5) working days of the approval of this stipulation by the Town Council, and

4-8-03  
  
 4-8-03  
  
 AR  
 4/8/03  
 The reasonable dust control measures shall be determined by the Town Manager.

04/04/2003 15:46 3054606002

LAW OFFICE

PAGE 10/13

CASE NO.: 03-04827 CA 32  
Stipulation and Judgment of Settlement

accomplish the task within thirty (30) days of the Council approval of this document.

4. The Town acknowledges that during the process to lower the muck piles there may be some air borne dust/particles and that air borne dust/particles caused by the process of lowering the muck piles will not be deemed a violation of this stipulation. The Dunns agree to use their best efforts to maintain the air borne dust/particles to a minimum during the lowering process.
5. If the Dunns fails to fulfill their obligation under this stipulation, or the Town Manager feels that a violation of this agreement exists, the Town Manager shall provide written notice to the Dunns, setting forth the matter and requesting compliance. The Dunns and the Town Manager no later than seven (7) working days after receiving notice, shall confer, in a good faith effort to seek an acceptable resolution.
6. Notice and conference, or notice and a good faith effort to confer, shall be a condition precedent to seeking judicial enforcement. (Good faith effort to confer shall mean a diligent effort to schedule a conference within the seven (7) working day period.)
7. The court shall retain jurisdiction to enforce this stipulation, and the aggrieved party shall have the right to seek judicial enforcement after complying with the notice and conference provisions as provided in paragraphs 5 and 6.
8. The above styled action shall be dismissed, each party to bear their respective fees and costs.
9. The parties acknowledge and agree as follows:

CASE NO.: 03-04827 CA 32

Stipulation and Judgment of Settlement

- A. This stipulation/agreement represents a mutual compromise by the parties, and is the result of a mutual good faith effort to amicably resolve the matters at issue and foster cooperation between the parties for the benefit of the residents of the Town, while avoiding the expense and inconvenience associated with litigation.
- B. The parties acknowledge that they each have denied, contested, and otherwise challenged the validity and merits of both the factual and legal basis of the claim asserted by the other.
- C. This stipulation does not constitute nor be construed as any form of admission of wrong doing, fault, or liability by either party, nor as any form of admission that the position taken or claim asserted by either party is/was legally or factually meritorious.
- D. This stipulation shall apply only to the resolution of the specific controversy and matters at issue between the named parties in this case, and inures only to the benefit of the parties to this agreement and their respective assigns.
- E. This stipulation shall have no force or effect as to any future dispute between the parties arising out of any other factual or legal matter or dispute.
- F. This stipulation shall not be admissible in any other proceeding, nor shall either party be stopped in any manner by virtue of this stipulation nor shall this stipulation constitute a waiver of any matter not specifically enumerated herein, and neither party shall


04/04/2003 15:46 3054606002

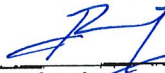
LAW OFFICE


PAGE 12/13


CASE NO.: 03-04827 CA 32  
Stipulation and Judgment of Settlement


be precluded in any manner from asserting or raising any factual or legal matter of a similar nature in the future.

  
Lowell Dunn  
Date: 4-4-03

  
Town of Miami Lakes  
By Alex Rey, Town Manager  
Pursuant to Resolution 03-126  
Date: April 8, 2003

  
Betty Dunn  
Date: 4-4-03

  
Jose M. Herrera, Esq.  
Date: 4-4-03

  
Date: April 8, 2003

04/04/2003 15:46 3054605002

LAW OFFICE

PAGE 13/13

**CASE NO.: 03-04827 CA 32**  
**Stipulation and Judgment of Settlement**

**JUDGMENT**  
**APPROVING AND INCORPORATING STIPULATION OF SETTLEMENT**

THIS CAUSE having come before the Court on this \_\_\_\_ day of \_\_\_\_\_, 2003, upon the parties' Stipulation of Settlement resolving certain pending matters, and the Court having considered said stipulation, and being otherwise advised in the premises, it is hereupon,

ORDERED AND ADJUDGED that the foregoing stipulation of the parties is hereby approved and adopted as an order of this Court.

The Court retains jurisdiction to enforce the provisions of the forgoing stipulation.

DONE AND ORDERED at Miami-Dade County, Florida this \_\_\_\_ day of March, 2003.

**HONORABLE ROBERT SCOLA**

cc:

Joseph Serota, Esq.  
Nina L. Boniske, Esq.  
Jose M. Herrera, Esq.