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June 11, 2010

Ralf Brookes, Esquire
1217 E. Cape Coral Parkway #107
Cape Coral, Florida 33904

Dear Mr. Brookes:

Attached please find a Motion to Determine Entitlement for Attorney's Fees Under Florida Statute Section 57.105. Please be advised that pursuant to Florida Statute Section 57.105(4) you have 21 days to dismiss your complaint, or this motion will be filed with the Court.

If you should have any questions in this regard please feel free to contact me.

Sincerely,



Marsha Segal-George, Esquire

cc: Kenneth G. Oertel, Esquire
Lisa Algiere, City Manager

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, IN AND FOR
MARION COUNTY, FLORIDA

CASE NO.: 10-1877 CAB

RAINBOW RIVER CONSERVATION, IN.,
A Florida Corporation, and FREDERICK S. JOHNSTON,
MICHAEL G. RAUSCH, MAX P. LYNN,
JOHN DENNIS, PATRICIA M. ERMATINGER,
JEAN TULLIS, THELMA B. DICKINSON,
MARGARET LONGHILL, NIKKI CONNORS, ROGER BARTH,
EMMA JEAN PAINTER, LEONARD GANE,
WALTER JOHNSON, SHIRLEY E. DOWLING,
FRANKLIN W. ROTH, AS INDIVIDUALS

Plaintiffs,

vs.

CITY OF DUNNELLON, FLORIDA

Defendant.

**MOTION TO DETERMINE ENTITLEMENT FOR ATTORNEY'S FEES UNDER
FLORIDA STATUTE SECTION 57.105**

COMES NOW, Defendant, City of Dunnellon, Florida, by and through its undersigned attorneys, pursuant to Florida Statute Section 57.105, respectfully requests that this Court enter an Order imposing sanctions, including, but not limited to, attorneys' fees and/or other sanctions against the Plaintiff and Plaintiff's Counsel and as grounds therefore states the following:

1. Plaintiff and its Counsel knew or should have known that the Complaint filed based on Florida Statute Section 163.3215 was not supported by the facts and was not supported by any application of "existing" law. Florida Statute Section 163.3215 only applies to a challenge of a development order and its consistency with the local government's comprehensive plan. The City has not issued a development order. The City has recognized vested rights and approved a Settlement Agreement pursuant to two (2) Bert Harris Claims

under Bert J. Harris, Jr., Private Property Rights Protection Act, Section 70.001 (2) of the Florida Statutes (hereinafter, "Bert Harris").

2. Plaintiffs and their Counsel should have known that this lawsuit had no merit when filed. The Complaint demonstrates a total or absolute lack of a justiciable issue. It appears the Complaint was filed to harass or injure Defendant City by forcing a costly defense of a non-meritorious claim.

3. Subsection 57.105 (1) Florida Statutes provides that upon the court's initiative, or by motion of any party, the court shall award a reasonable attorneys' fee to be paid to the prevailing party in equal amounts by the losing party of the losing party's attorney when the losing party or the losing party's attorney knew or should have known that a particular claim or defense was not supported by the material facts necessary to establish the claim or defense; or would not be supported by the application of then-existing law to those material facts.

4. Plaintiffs filed a complaint under Florida Statute Section 163.3215. This Complaint on its face did not meet the legal requirements of Section 163.3215 and Plaintiff and Plaintiff's Counsel should have known that. No development order has been approved and/or issued by the City. The City's Settlement Agreement with the owners of Rainbow River Ranch LLC and Conservation Land Group, LLC was approved in response to two (2) Bert Harris Claims and a current active Bert Harris Lawsuit. The City and the property owners, indispensable parties not named in this Complaint by the Plaintiffs, have acted in accordance with the requirements of Section 70.001(4)(d)(2) and said Settlement Agreement has been presented to the Circuit Court as required under Case Number 42-2010-CA-001960-A.

5. Plaintiffs filed a Complaint under Florida Statute Section 163.3215, that did not allege facts which would support a claim under the law and Plaintiffs and Plaintiffs' Counsel should have known that.

6. Plaintiffs and its Counsel knew or should have known that the Complaint as filed had no basis in fact or law.

8. Defendant is a small City with limited resources and funds and has incurred fees and costs in defending this Complaint.

9. Defendant City is entitled to an award of attorney's fees, costs, damages, and such other sanctions as the court deems appropriate. Section 57.105 (1).

10. Pursuant to Section 57.105 (4), the Defendant City will serve this Motion to Plaintiffs' Counsel, 21 days prior to presenting same to the Court.

WHEREFORE, Defendant, City of Dunnellon, respectfully requests this Honorable Court enter an Order imposing Sanctions under Section 57.105, including all of the following: 1] an award of attorneys' fees and costs incurred in bringing this Motion; 2] an award of attorneys' fees and costs incurred in defending this action and such other relief as the Court deems necessary and appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail to Ralf Brookes, Esquire, Attorney for Proposed Interveners, 1217 E. Cape Coral Parkway #107, Cape Coral, FL 33904 and Ken Oertel, Esquire, Attorney for Plaintiffs, Oertel, Fernandez, Cole & Bryant, P.A., Post Office Box 1110, Tallahassee, Florida 32302 this ___ day of June, 2010.

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