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COUNTY ATTORNEY'S OFFICE
MEMORANDUM

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *[Signature]*

FROM: Henry M. Brown, Assistant County Attorney Ext. 5736 *HMB*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department *[Signature]*
 Kathleen Myer, Principal Engineer/Engineering Division *[Signature]*

DATE: December 15, 2004

SUBJECT: Settlement Authorization Phase IIB
 Parcel Nos. 204, 704A, 704B, 804, 206, 706 and 806
Seminole County v. Simons, et al.
 Case No. 2003-CA-2222-13-K
 Owners: Joshua Horace Simons and Bernice W. Simons (204, 704A, 704B, 804) Burnice J. Simons, Jr., and Daniel C. Simons (206, 706 and 806)

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) as to the captioned parcels. The recommended, mediated settlement is at the total sum of \$402,724.52, inclusive of all land values, severance damages, statutory interest, statutory attorney's fees and cost reimbursements. These parcels are presented together as the same attorney represents all the owners, the owners are related to each other, the cases were mediated together and the owners made settlement of each parcel contingent upon settlement of all parcels at the same time. The total settlement is allocated between the parcels as follows: \$240,759.12 for parcels 204, 704 A&B and 804, and \$161,965.40 for parcels 206, 706 and 806.

I PROPERTIES The properties are owned by members of the same family and are next door to each other.

A. Location Data

Parcel No. 204 is a fee simple acquisition of 0.7699 acres. Parcel Nos. 704A and 704B are temporary construction easements totaling 2,541.7 S.F. Parcel 804 is a permanent drainage easement covering 4,170.7 S.F.

Parcel No. 206 was a fee simple acquisition of 1.1342 acres. Parcel No. 706 is a temporary construction easement totaling 790 S.F. Parcel 806 is a permanent drainage easement totaling 3,215 S.F.

Parcel sketches are attached as Exhibits A-1 and A-2.

B. Street Address

The street addresses are 2715 and 2725 Sand Dollar Point. A location map is attached as Exhibit B.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2003-R-47 on February 11, 2003, authorizing the acquisition of the parcels and finding that the East Lake Mary Boulevard project was necessary, served a public purpose and was in the best interests of the citizens of Seminole County.

III ACQUISITIONS AND REMAINDER

A. Parcels 204, 704A, 704B and 804. Parcel 204 consists of .7699 acres; the parent tract is 5.3182 acres, leaving a remainder of 4.5484 acres. The acquisition took 70 feet from the front of the parcel, destroying the trees at the front of the property and the entire decorative brick wall.

B. Parcels 206, 706 and 806. Parcel 206 consists of 1.1342 acres; the parent tract is 3.513 acres, leaving a remainder of 2.3788 acres. The acquisition took 120 feet from the front of the parcel, destroying the trees at the front of the property and the access easement.

IV APPRAISED VALUES

The County's appraisal reports were prepared by the Spivey Group, Inc., and reported full compensation to be a total of \$94,200.00.

The owners reports were prepared by Calhoun, Dreggors and Associates with a tree consultant. Full compensation for both parcels together was opined to be \$506,461.00 allocated: (1) \$461,900.00 to land, severance damages, and improvements; and, (2) \$44,561.00 for restoration of the tree buffer.

V NEGOTIATION/MEDIATION

These cases were set for trial during the week of December 13, 2004, and went to mediation on November 12, 2004. The rules regarding mediation require confidentiality of the negotiations and all that is said and done during the mediation

session. Accordingly, a description of the offers, counter offers and negotiating positions would be inappropriate. The final number for land value, severance damages, trees, the wall and all other items of full compensation is \$269,005.00, less than the half way point between the parties.

The factors considered by the County in reaching the proposed settlement are the future land use of suburban estates and the residential improvements. The residences are set into a heavily wooded area. The acquisition removed 70 to 120 feet from the front of the parcels, including trees and a decorative wall. Other properties along the new roadway are clearly benefited by frontage on a new roadway, however, the owners will testify that the roadway destroyed the suburban estates nature of the area and adversely impacted the residences.

The residences were built by the owners twenty-seven (27) years ago and have been in the family ever since. The owners would be sympathetic witnesses, likely to sway the jury in their favor and against the County as has happened in at least one case before. Juries tend to identify with an individual owner and sympathize with their loss.

The County is required to attend the mediation with a representative authorized to recommend a settlement should one be reached. The Engineering Department was represented in this mediation and agreed that the proposed settlement is reasonable and should be recommended to the BCC.

VI ATTORNEY FEE REIMBURSEMENT

The attorney's fee reimbursement is computed based upon the statute (1/3 of the difference between the final settlement and the original binding written offer). The total for fees is \$56,920.00 based upon binding written offers of \$70,500.00 and \$26,000.00.

VII COST REIMBURSEMENT

The owners claimed costs totaling \$95,241.88 for both parcels allocated:

(1)	Appraisal services	\$46,109.00
(2)	Engineering services	\$ 5,134.50
(3)	Planning services	\$22,292.38
(4)	Acoustics consultant	\$ 9,100.00
(5)	Tree consultant	\$ 4,875.00
(6)	Construction estimator	\$ 6,280.00
(7)	Law office costs	<u>\$ 1,451.00</u>
	TOTAL COSTS CLAIMS	<u>\$95,241.88</u>

In negotiation, several non-reimbursable office overhead costs were taken out and some expert claims reduced. Negotiations resulted in a reduction of 19.4% from \$95,241.88 to \$76,799.52. The amounts are allocated as follows:

(1)	Appraisal services	\$34,581.75
(2)	Engineering services	\$ 4,877.78
(3)	Planning services	\$16,719.29
(4)	Acoustics consultant	\$ 8,645.00
(5)	Tree consultant	\$ 4,631.25
(6)	Construction estimator	\$ 5,966.00
(7)	Law office costs	<u>\$ 1,378.45</u>
TOTAL COSTS CLAIMS		<u>\$76,799.52</u>

VIII RECOMMENDATION

The proposed settlement is recommended at the total amount of \$402,724.52 inclusive of all land value, severance damage, statutory interest, statutory attorney's fees and cost reimbursements, allocated between the parcels as follows: \$240,759.12 for parcels 204, 704 A&B and 804, and \$161,965.40 for parcels 206, 706 and 806. Although the land value is less than the midpoint between the parties, the costs and fees are almost 1/2 of the land value and constitute about 1/3 of the total settlement amount. At trial a jury verdict of less than the midpoint is usually considered a victory for the County as juries often split the difference between the parties.

If the Board rejects the proposed settlement then the case will be scheduled for trial and submitted to a jury for determination.

HMB/dre

Attachments:

Exhibit A - Parcel Sketch

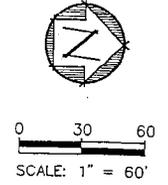
Exhibit B - Location Map

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**EAST LAKE MARY BOULEVARD EXTENSION
SEMINOLE COUNTY, FLORIDA
PARCELS 204, 704AB & 804 - SKETCH OF SURVEYED PARCEL
PARCEL DESCRIPTION: RESIDENTIAL**

AREA OF PARENT TRACT = 5.3182 ACRES
 AREA OF TAKING = 0.7699 ACRES
 AREA OF REMAINDER = 4.5484 ACRES
 AREA OF BASEMENT 804 = 4170.7 SF
 AREA OF TCE 704A = 691.4 SF
 AREA OF TCE 704B = 1850.3 SF

NOTE: BRICK COLUMNS IN ENTRANCE WALL
 VARY IN HEIGHT 7'-10.5'
 BRICK ENTRANCE WALL VARIES
 IN HEIGHT 2'- 8.3'



LEGEND

- UTILITY POLE AND GUY ANCHOR
- PP POWER POLE
- SIGN
- W.M. WATER METER
- R/W RIGHT OF WAY
- BROKEN SCALE
- EOP EDGE OF PAVEMENT
- FN&C FOUND NAIL AND CAP
- BFP BACKFLOW PREVENTER
- WATER VALVE
- D/W DRIVEWAY
- MES MITERED END SECTION
- LANDSCAPED AREA
- SV SEWER FORCEMAIN VALVE
- SEWER CLEAN OUT
- FIRE HYDRANT
- LP LIGHT POLE
- PB PULL BOX
- S.W. SIDEWALK
- SSP SIGNAL SPAN POLE
- TP TELEPHONE POLE
- OT OVERHEAD TELEPHONE
- SRVC TRAFFIC SERVICE CABINET
- MHD DRAINAGE MANHOLE
- MHS SANITARY SEWER MANHOLE
- MW MONITORING WELL
- SPRINKLER HEAD
- ELEO ELECTRIC OUTLET
- SHP SHARED UTILITY POLE

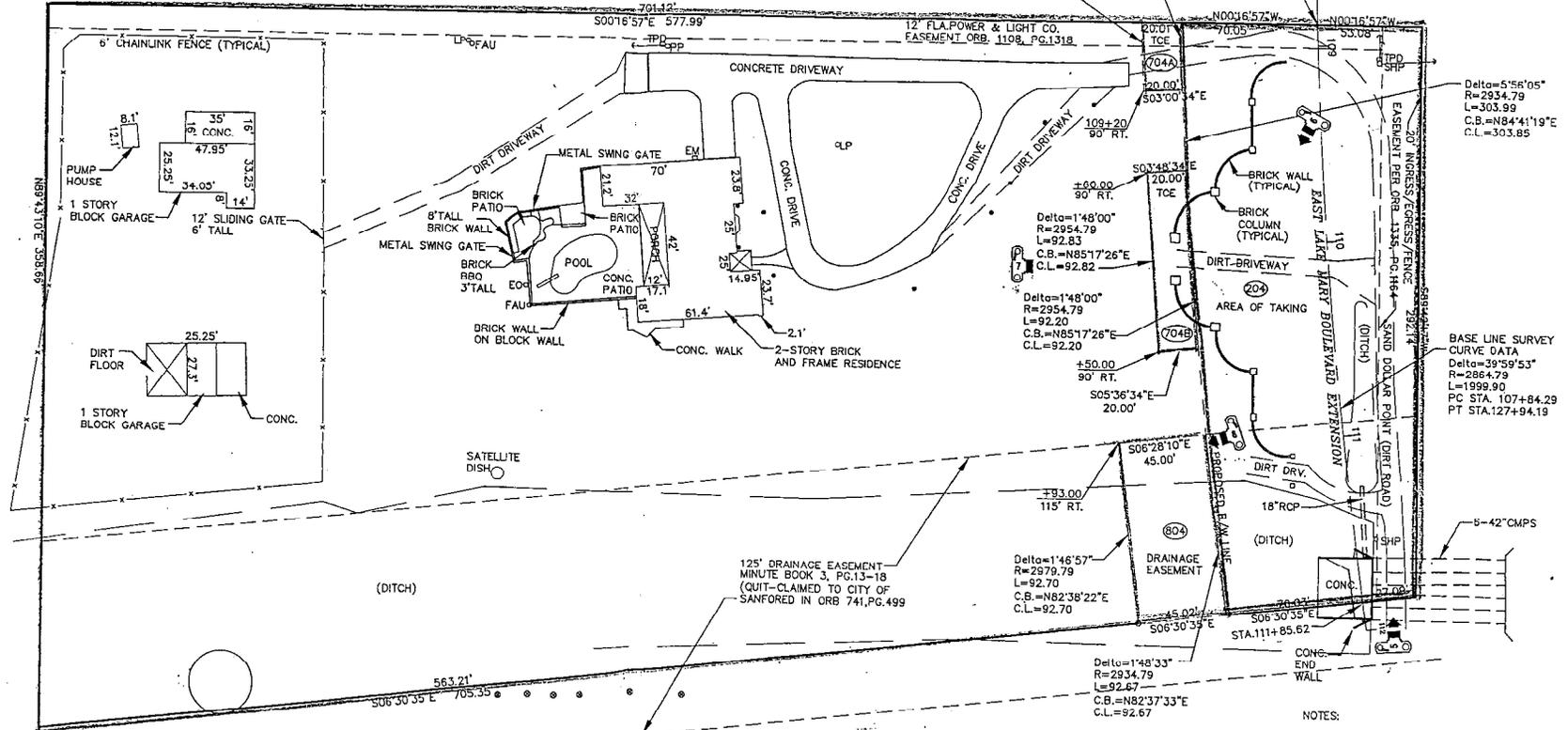


Exhibit
A

NOTES:
 THIS IS A SKETCH ONLY, THIS IS NOT A
 BOUNDARY SURVEY
 THE PURPOSE OF THIS SKETCH IS TO AID IN
 THE APPRAISAL OF THE SUBJECT PARCEL
 ALL BOUNDARY INFORMATION AND CALCULATIONS
 ARE BASED ON A SPECIFIC PURPOSE MAP AND
 CONTROL SURVEY, EAST LAKE MARY BOULEVARD
 EXTENSION, FROM OHIO AVENUE TO SILVER LAKE
 DRIVE, COUNTY PROJECT: PS-0137

KEY	DATE	REVISIONS

SKETCH DATE: 1/22/03	FIELD BOOK/PAGE: F.B. 56/59
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**CORNERSTONE
LAND SURVEYING, INC.**

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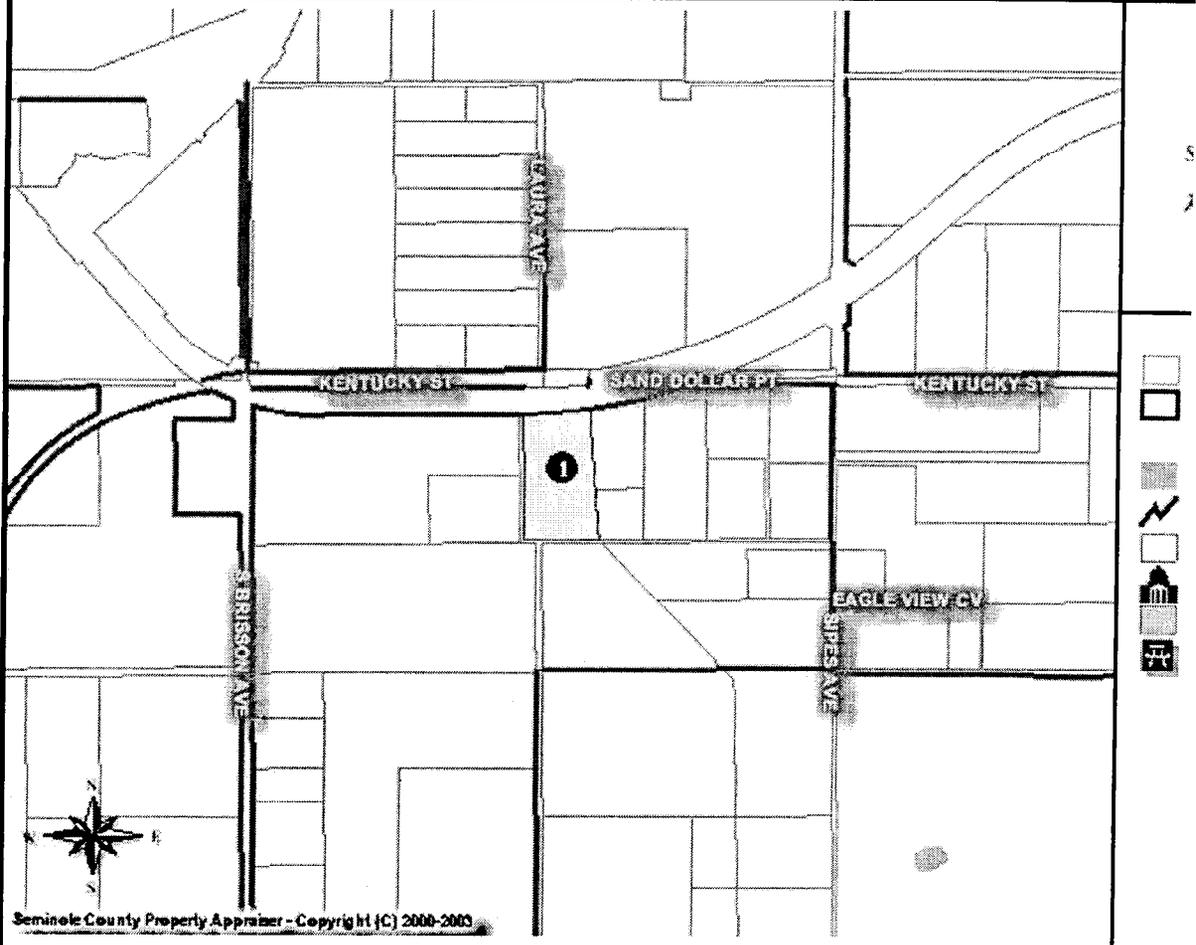
PROJECT EAST LAKE MARY BOULEVARD EXTENSION SEMINOLE COUNTY - PARCEL 204, 704AB, 804	CLIENT THE SPIVEY GROUP, INC.
SHEET TITLE SKETCH OF SURVEY PARENT TRACT AND AREA OF TAKING	JOB NO. TSG02204
	SHEET NO. 2 of 3

Seminole County, Florida

Property Appraiser Services

H.W. "Bill

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Rec	Parcel	Owner	Owner Addr	City	State
1	17203150100000150	SIMONS JOSHUA H & BERNICE W	PO BOX 1026	SANFORD	FL

Exhibit B