



COUNTY ATTORNEY'S OFFICE
MEMORANDUM

TO: Board of County Commissioners

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

FROM: Herbert S. Zischkau III, Assistant County Attorney *[Signature]*
Ext. 5736

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

DATE: December 12, 2003

RE: *Seminole County v. Danbury Mill Homeowners' Association, Inc.*
Case No. 03-CA-326-13-K
City of Lake Mary
Lake Emma Road road improvement project
Parcel Nos. 121 and 122

This Memorandum requests approval by the Board of County Commissioners (BCC) and execution by the Chairman of a Subordination Of Utility Interests agreement with respect to the easement interest of the City of Lake Mary ("Lake Mary") relating to the Lake Emma Road Project, Parcel Nos. 121 and 122. The above referenced properties were acquired by Seminole County on June 24, 2003.

The BCC adopted Resolution No. 98-R-245, on November 10, 1998, authorizing the acquisition of parcels in the Lake Emma Road Project, and finding that the project was necessary and served a public purpose and is in the best interest of the citizens of Seminole County. A supplemental resolution was approved by the BCC on April 9, 2002, relating to parcels not included in Resolution No. 98-R-245.

Lake Mary, through its Mayor, has signed and tendered a recordable instrument, entitled Subordination of Utility Interests. County staff asks that the BCC accept this Subordination of Utility Interests for filing in the land records, because it allows the project to go forward without further litigation over Lake Mary's interests.

Lake Mary's interest in the referenced properties is as owner of a water line. Lake Mary has agreed to provide the subordination of its interests without charge.

HZ/dre
Exhibit A - Location Map
Exhibit B - Copy of Subordination Agreement

P:\USERS\CADE01\MY DOCUMENTS\MEMBCC LAKE EMMA LAKE MARY SUBORDINATION .DOC

THIS INSTRUMENT PREPARED BY:
HERBERT S. ZISCHKAU III
ASSISTANT COUNTY ATTORNEY
1101 EAST FIRST STREET
SANFORD, FL 32771
(407) 665-5736

SUBORDINATION OF UTILITY INTERESTS

THIS AGREEMENT, entered into this _____ day of _____, 2003, by and between **THE CITY OF LAKE MARY**, a municipal corporation, whose address is 100 North Country Club Road, Lake Mary, Florida 32746, hereinafter referred to as "CITY," and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the CITY presently has an interest in certain lands that have been determined necessary for use as right-of-way for additional traffic lanes and improved drainage facilities on Lake Emma Road; and

WHEREAS, the proposed use of these lands for use as right-of-way for additional traffic lanes and improved drainage facilities purposes on Lake Emma Road will require subordination of the interest claimed in such lands by the CITY to the COUNTY; and

WHEREAS, the COUNTY is willing to pay to have the CITY's facilities relocated, if necessary, to prevent conflict between the facilities so that the benefits of each may be retained,

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, the CITY and the COUNTY agree as follows:

THE CITY subordinates any and all of its interest in the lands described on Exhibit "A" attached hereto to the interest of the COUNTY, its successors, or assigns, for the purpose of constructing, improving, maintaining and operating a road, including drainage facilities, over, through, upon, and/or across such lands, including, but not limited to, the claim of interest based on the following:

NATURE OF ENCUMBRANCE	DATE	FROM OR AGAINST	IN FAVOR OF	RECORDED BOOK/PAGE
Bill of Sale	December 18, 1995	Pulte Home Corporation	City of Lake Mary	Book 3015, Page 0001

PROVIDED that the CITY has the following rights:

1. The CITY shall have the right to construct, operate, maintain, remove, and relocate facilities on, within, and upon the lands described herein. Any new construction or relocation of facilities within the lands will be subject to prior approval by the COUNTY's Engineer.

2. The CITY shall have a reasonable right to enter upon the lands described herein for the purposes outlined in Paragraph 1 above, including the right to trim such trees, brush, and growth which might endanger or interfere with such facilities, provided that such rights do not interfere with the operation and safety of the COUNTY's facilities.

3. The CITY agrees to repair any damage to COUNTY facilities resulting from the CITY exercising its rights outlined in Paragraphs 1 and 2 above.

4. Should the COUNTY require the CITY to alter, adjust, or relocate its facilities located within said lands, the COUNTY hereby agrees to pay the cost of such alteration, adjustment or relocation.

ATTEST:

Carol A. Foster
CAROL A. FOSTER, City Clerk

CITY OF LAKE MARY

By: Thomas C. Greene
THOMAS C. GREENE, Mayor

Date: 11-6-03

For the use and reliance of the City of Lake Mary only. Approved as to form and legal sufficiency.

Cathy Reusch
City Attorney

As authorized for execution by the City Commission at its November 6, 2003, regular meeting.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. McLAIN, Chairman

Date: _____

For the use and reliance of Seminole County only. Approved as to form and legal sufficiency.

County Attorney

As authorized for execution by the Board of County Commissioners at its _____, 2003, regular meeting.

COMPOSITE EXHIBIT 1

R/W Project: Lake Emma Road
R/W Parcel: 121
Tax I.D. #: 19-20-30-522-0B00-0000

Fee Simple

That portion of Tract B, Huntington Pointe, Phase I, according to the Plat thereof as Recorded in Plat Book 49, Pages 35 and 36, Public Records of Seminole County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Tract B, said point lying on the Westerly right-of-way line of Lake Emma Road, thence $S00^{\circ}13'51''E$, along the East line of said Tract B and Westerly right-of-way line, a distance of 17.53 feet; thence departing said East line and Westerly right-of-way line, $N47^{\circ}31'56''W$, 25.85 feet to the Northerly line of said Tract B, thence $N89^{\circ}46'09''E$, along said Northerly line, 19.00 feet to the POINT OF BEGINNING.

Containing 167 square feet more or less.

COMPOSITE EXHIBIT 1

R/W Project: Lake Emma Road
R/W Parcel: 122
Tax I.D. #: 19-20-30-522-0A00-0000

Fee Simple

That portion of Tract A, Huntington Pointe, Phase I, according to the Plat thereof as Recorded in Plat Book 49, Pages 35 and 36, Public Records of Seminole County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said Tract A, thence $S89^{\circ}46'09''W$, along the South line of said Tract A, a distance of 13.07 feet; thence departing said South line, $N38^{\circ}12'25''E$, 21.02 feet to the Easterly line of said Lot 132 and the Westerly right-of-way line of Lake Emma Road, thence $S00^{\circ}13'51''E$, along said Easterly line and Westerly right-of-way line, 16.47 feet to the POINT OF BEGINNING.

Containing 108 square feet more or less