

**SEMINOLE COUNTY ATTORNEY'S OFFICE**  
**AGENDA**  
**January 23, 2007**

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Action Requested:

Authorization to proceed as indicated.

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Authorization:

 County Attorney      CCA00

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**Litigation**

**Elliott property.** Approve proposed negotiated settlement relating to Parcel Numbers 168/768 on the Lake Drive road improvement project. The proposed settlement is at the total sum of \$250,000.00 inclusive of all compensation to the owner, attorney fees of any kind, all costs, interest and other expense for which Seminole County might be obligated to pay relating to these parcels. Judge Dickey.



COUNTY ATTORNEY'S OFFICE  
MEMORANDUM

TO: Board of County Commissioners

THROUGH: Matthew G. Minter, Deputy County Attorney *mm*

FROM: David G. Shields, Assistant County Attorney *DGS*  
Ext. 5736

CONCUR: Pam Hastings, Administrative Manager/Public Works Department  
David V. Nichols, P.E./Principal Engineer/Major Projects *DVA 12-21-06*

DATE: December 15, 2006

SUBJECT: Settlement Authorization  
Lake Drive road improvement project  
Parcel Nos.: 168/768  
Owner(s): Louise Elliott as Trustee  
*Seminole County v. Elliott, et al.*  
Case No. 2004-CA-561-13-W

This memorandum requests settlement authorization by the Board of County Commissioners (BCC) as to Parcel Nos. 168/768 on the Lake Drive road improvement project. The recommended settlement is at the total sum of \$250,000.00 inclusive of all compensation to the owner, attorney fees of any kind, all costs, interest and any other matter for which Seminole County might be obligated to pay in the referenced case.

**I PROPERTY**

**A. Location Data**

The subject parcels are located on the north side of Seminola Boulevard 535 feet east of Lake Drive in Casselberry, Florida. See Location Map attached as Exhibit A. The parent tract is a commercial property.

**B. Street Address**

The street address is 1461 Seminola Boulevard, Casselberry, Florida.

## **II AUTHORITY TO ACQUIRE**

The BCC adopted Resolution No. 2002-R-70 on April 23, 2002 and Resolution No. 2003-R-133 on August 26, 2003; authorizing the acquisition of Parcel Nos. 168/768 and finding that the Lake Drive road improvement project is necessary and serves a public purpose and is in the best interests of the citizens of Seminole County. The Order of Take occurred on May 24, 2004, with title vesting in Seminole County on June 2, 2004, the date of the good faith deposit for these parcels in the amount of \$22,600.00.

## **III ACQUISITIONS AND REMAINDER**

The fee acquisition consists of 307 square feet of land area. The remainder property is 39,693 square feet. The temporary construction easement is located in the southeast corner of the remainder and contains 1,236 square feet. Its purpose is to construct a driveway that will provide an acceptable transition from the roadway back down to the existing grade of the remainder. See Parcel Sketch attached as Exhibit B.

## **IV APPRAISED VALUES**

### **A. County Report.**

The County's original report dated September 11, 2003, by Paul M. Roper, MAI with Clayton, Roper & Marshall, Inc., reported full compensation for Parcel No. 168 to be \$19,500.00 and \$2,900.00 for Parcel No. 768. The appraisal report was updated on May 6, 2004, for the order of take hearing and opined values at \$19,600.00 for 168 and \$3,000.00 for 768. Updated trial appraisals reported the values as of June 2, 2004, the date of the initial good faith deposit to be \$19,700.00 for 168 and \$3,350.00 for 768.

### **B. Owner's Report.**

The owner's appraiser, James J. Ward, MAI, SRA, with Ward Valuation Services LLC, produced an appraisal report dated December 19, 2005 to opine compensation to be \$285,600.00 for Parcel No. 168 and \$4,960.00 for Parcel No. 768. The owner then updated her appraisal report on November 18, 2006, reporting full compensation to be \$294,500.00 for Parcel No. 168 and \$4,960.00 for Parcel No. 768. The owner updated her appraisal report again on December 4, 2006, reporting full compensation to be \$259,500.00 for Parcel No. 168 and \$4,960.00 for Parcel No. 768.

## **V BINDING OFFER/NEGOTIATION**

The County's initial written offer for Parcel Nos. 168/768 was \$26,900.00. Mediation was held on January 10, 2006, and an impasse resulted. After the Court granted the owner a continuance, the trial for Parcel Nos. 168/768 was scheduled to proceed on January 22, 2007.

## **VI ATTORNEY'S FEES AND COSTS**

The negotiated settlement of \$250,000.00 is inclusive of all attorney's fees of any kind and cost reimbursements.

## **VII RATIONALE AND COST CONTROL**

The respective appraisals of the County and the owner were very close on the value of the land taken and the temporary construction easement. Under both appraisals these amounts were only a few thousand dollars. The appraisals differed widely on the amount of severance damages. The County's final report indicated a \$17,700.00 minor cost to cure. The owner's final report indicated \$130,900.00 in unmitigated severance damages and a \$126,500.00 cost to cure for a total of \$257,400.00. Several disputed issues of fact led to these very different conclusions.

There are seven business tenants on this site. According to the owner, four of these business tenants require access by large tractor-trailer rigs, including the business owned by the property owner's husband. Due to a significant grade change between the new roadway and the private property, and other effects, the owner contended that she was required to remove 1000 square feet of her building area to make room for a new truck turn-around area. The owner incurred significant engineering fees in this regard as well. The Count disputed whether the owner actually had proper turn-around capability in the before.

The new driveway also triggered changes to the owner's retention system and parking. Although the County's appraiser recognized the need for some of these changes, the owner's appraiser and engineer called for more drastic and more costly changes. There was also a dispute over the extent to which some of these more drastic changes were required by the City of Casselberry in approving the site plan for changing the retention system and removing the building area.

If the jury had found in favor of the owner's appraisal amount, the compensation combined with attorney fees and costs could have exceeded \$440,000.00. Therefore, the settlement for \$250,000.00 inclusive of attorney fees and cost reimbursements is reasonable.

## **VIII COST AVOIDANCE**

By this settlement, the County avoids all additional costs associated with litigation.

## **IX RECOMMENDATION**

County staff recommends that the BCC approve this negotiated settlement at \$250,000.00, inclusive of all compensation to the owner, attorney fees of any kind, all

costs, interest and any other matter for which Seminole County might be obligated to pay in the relating to the referenced parcels

DGS/dre

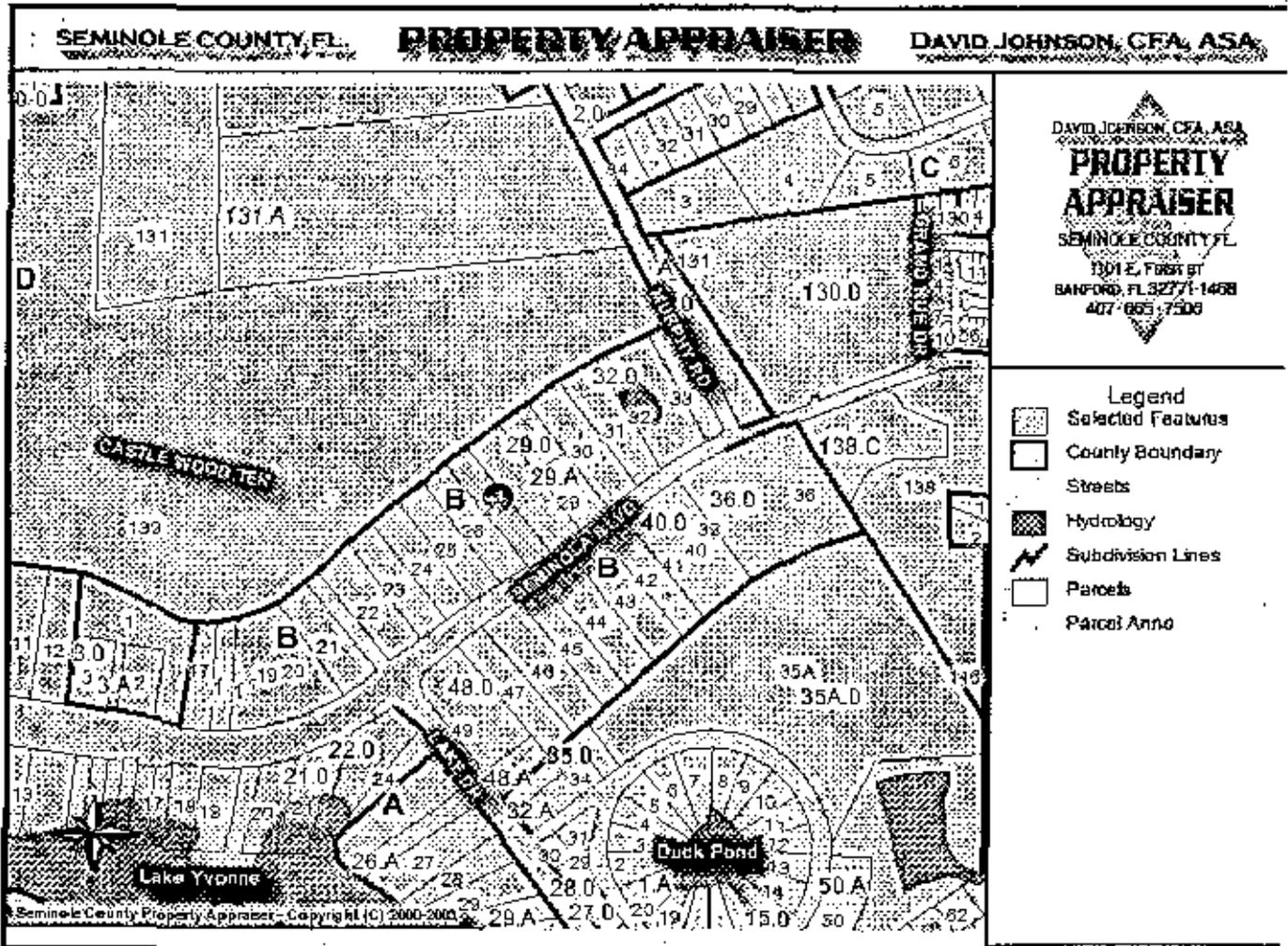
Attachments:

Exhibit A –Location Map

Exhibit B –Sketch

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EXHIBIT A



DAVID JOHNSON, CFA, ASA  
**PROPERTY APPRAISER**  
 SEMINOLE COUNTY, FL  
 1301 E. FOREST  
 SANFORD, FL 32771-1468  
 407-665-7500

- Legend
- Selected Features
  - County Boundary
  - Streets
  - Hydrology
  - Subdivision Lines
  - Parcels
  - Parcel Anno

Rec	Parcel	Owner	Owner Addr	City	State	Zip
1	0921305BM0B000270	ELLIOTT LOUISE B TRUSTEE	220 MINNEHAHA RD	MAITLAND	FL	32751



COUNTY COMMISSION - SEMINOLE  
BOCC Project Expenditure Status Report  
BOCC Project Expenditure Status Report  
For the Three Periods Ending December 31, 2006

Department: 07 PUBLIC WORKS  
Division: 0775 ENGINEERING

Project	Business Unit	Object	Subsidiary	Description	Adopted Budget	Current Budget	Period Expenditures	Outstanding Encumbrances	YTD Expenses	Available Balance
Project: 00012401	LAKE DRIVE/SEMINOLA BLVD-TUSK									
00012401	077515	.560610.		Land	329,594	330,151		557		329,594
00012401	077515	.560670.		Roads	40,564	3,981,054	318,361	3,622,108	318,361	40,584
00012401	077515	.560680		Construction & Design	3,061	3,975	315	3,014	315	646
00012401	077522	.560610.		Land						
00012401	077523	.560610.		Land						
00012401	077523	.560670.		Roads						
00012401	077525	.560610.		Land	769,061	770,361		1,299		769,062
00012401	077525	.560670.		Roads	196,697	9,391,126	742,843	8,451,586	742,843	196,697
00012401	077525	.560680.		Construction & Design	6,809	8,942	735	7,032	735	1,175
					<u>1,345,806</u>	<u>14,485,609</u>	<u>1,062,255</u>	<u>12,085,596</u>	<u>1,062,255</u>	<u>1,337,759</u>
Total Division:	0775		ENGINEERING		<u>1,345,806</u>	<u>14,485,609</u>	<u>1,062,255</u>	<u>12,085,596</u>	<u>1,062,255</u>	<u>1,337,759</u>
Total Department:	07		PUBLIC WORKS		<u>1,345,806</u>	<u>14,485,609</u>	<u>1,062,255</u>	<u>12,085,596</u>	<u>1,062,255</u>	<u>1,337,759</u>
Report Totals:					<u>1,345,806</u>	<u>14,485,609</u>	<u>1,062,255</u>	<u>12,085,596</u>	<u>1,062,255</u>	<u>1,337,759</u>