



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 *HMB*
Ext. 5736

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

DATE: January 26, 2004

SUBJECT: Settlement Authorization
Howell Branch Road, Phase II
Parcel Nos.: 109 and 709
Owner(s): Stephen D. Korshak and R. Neil Beaulieu
Seminole County vs. Korshak, et al.
Case No.: 95-CA-1220-13-G

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) for Parcel Nos. 109 and 709 on the Howell Branch Road, Phase II project. The recommended settlement is at the total sum of ONE HUNDRED NINETY-SIX THOUSAND SIX HUNDRED EIGHTY AND NO/100 DOLLARS (\$196,680.00), inclusive of all land value, severance damage, statutory interest, attorney's fees, and costs.

I PROPERTY

A. Location Data

Parcel No. 109 is a fee simple acquisition of 6,255 square feet. Parcel No. 709 is a temporary construction easement of 561 square feet. A parcel sketch is attached as Exhibit A.

B. Street Address

The street address is 1995 Howell Branch Road, Casselberry, Florida. A location map is attached as Exhibit B.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 92-R-87 on March 24, 1992, authorizing the acquisition of Parcel Nos. 109 and 709, and finding that Howell Branch Road, Phase II was necessary and served a public purpose and was in the best interest of the citizens of Seminole County.

III ACQUISITIONS AND REMAINDER

The fee simple acquisition consists of 6,255 square feet leaving a remainder of 24,263 square feet. The acquisition was along the Howell Branch Road side of this corner lot. The acquisition ranged in depth from 34 feet to 47 feet.

The parent tract is improved with a retail commercial building originally used as a service station. The building was renovated as a commercial storefront and, on September 14, 1995, the date of taking, was rented to Clemons Produce. Clemons Produce was not eligible for business damages.

The taking consumed 17 of 23 paved parking spaces coming within 4.55' of the building. The impact of the taking was significant.

IV APPRAISED VALUES

A. County Report

The County's appraisal report was performed by Real Property Analysts, Inc., in September, 1995, and opined a total value of \$90,100.00. The report found a land value of \$12.25 per square foot and assigned no contributory value to the existing building. The report also found no severance damages because it assumed that the project would be built in due course and the building would be taken down during the road construction.

B. Owner's Report

The owner's report was prepared by Calhoun, Dreggor's and Associates, Inc., as a retrospective report performed in 2003. The report opined full compensation to be \$167,400.00, including \$98,600.00 in severance damage based on an interim use of the building subsequent to the date of take. This calculation differed from the County's appraisal which assumed no interim use of the building. In fact, there has been nine years of interim use as the building still exists.

V NEGOTIATION

Negotiation centered on the concept of interim use and the viability of that claim. The delayed construction of Howell Branch Road, Phase II has in fact resulted in the continuation of the operation of Clemons Produce to date. The County's report was correct in that the building had no theoretical continued value in 1995 had construction occurred at that time. However, the project delay would allow the owners to argue a severance damage theory to the jury, if the case went to trial

Although the County disputed the amount of severance damages based upon the interim use argument, it was concluded that a settlement was in the County's best interest due to the possibility of a jury verdict in excess of the County's appraised value. Because this case has been pending for quite some time the interest on any amount awarded in excess of the County's good faith deposit would almost double the amount the County had to pay. For example, had the jury elected to split the difference between the County number (\$90,100.00), and the owner's number (\$167,400.00) the award would have been \$128,750.00 an increase of \$38,650.00 over the good faith deposit. However, because of the interest due on that amount, the County would have had to pay approximately \$70,000.00, plus costs and attorney's fees.

The costs submitted were slightly in excess of \$20,000.00 and included appraisal and engineering fees. If this case went to trial those costs would increase due to the time and effort of trial preparation and presentation of the case. Given the exposure involved in a potential jury verdict only slightly in favor of the owners and the amount of additional costs, staff elected to recommend a settlement of \$196,680.00, inclusive of all fees and costs. This amount consists of the appraisal and engineering fees as submitted, land value (including all damages) and a statutory attorney's fee.

VI COST AVOIDANCE

By this settlement, the County avoids the following additional costs, beyond those for which it is already liable by law:

- A. A potential jury verdict higher than the allocation to land and severance damage;
- B. Continuing statutory interest;
- C. Continuing attorney fees and expert costs; and
- D. County costs to proceed further.

VII ANALYSIS

The concept of an interim use of the improvements presents a different approach that would be difficult to address before a jury. Any retrospective appraisal would probably have to consider this concept of interim use as the improvements have proven themselves to have continued value. The delay in construction of this project invalidated a part of the assumptions made in the County's original appraisal, requiring a retrospective look at the values. This is the last case where this result could be obtained on Howell Branch Road, Phase II.

VIII RECOMMENDATION

County staff recommends that the BCC approve this settlement in the amount of \$196,680.00 inclusive of land, severance damage, statutory interest, attorney's fees, and expert costs.

HMB/sb

Attachments:

Exhibit A

Exhibit B

P:\USERS\CASB01\MY DOCUMENTS\MEMAGENDA ITEM HOWELL BRANCH RD KORSHAK SETTLEMT AUTH.DOC

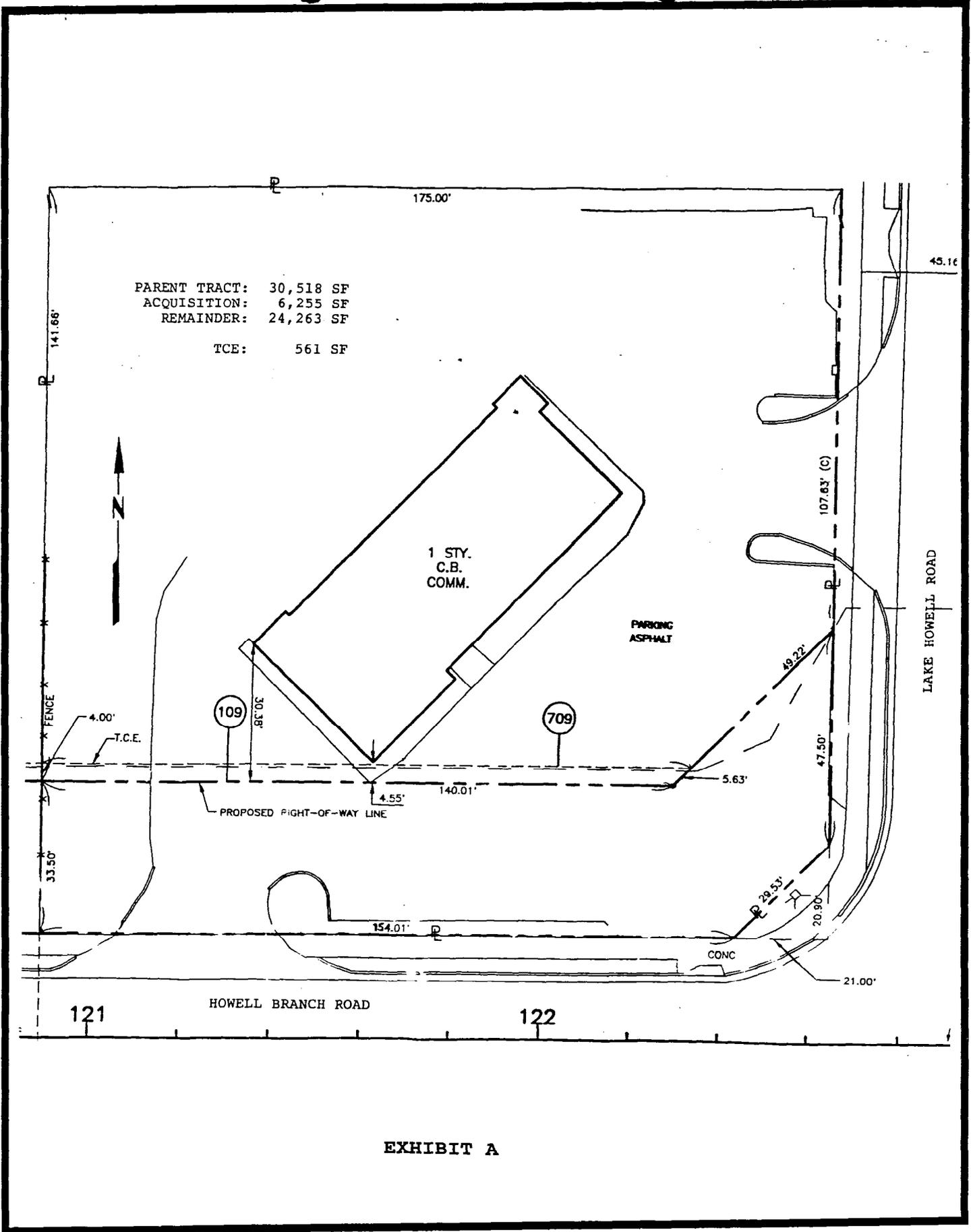


EXHIBIT A

EXHIBIT F: SUBJECT PARCEL SKETCH (109/709) WITH TAKING

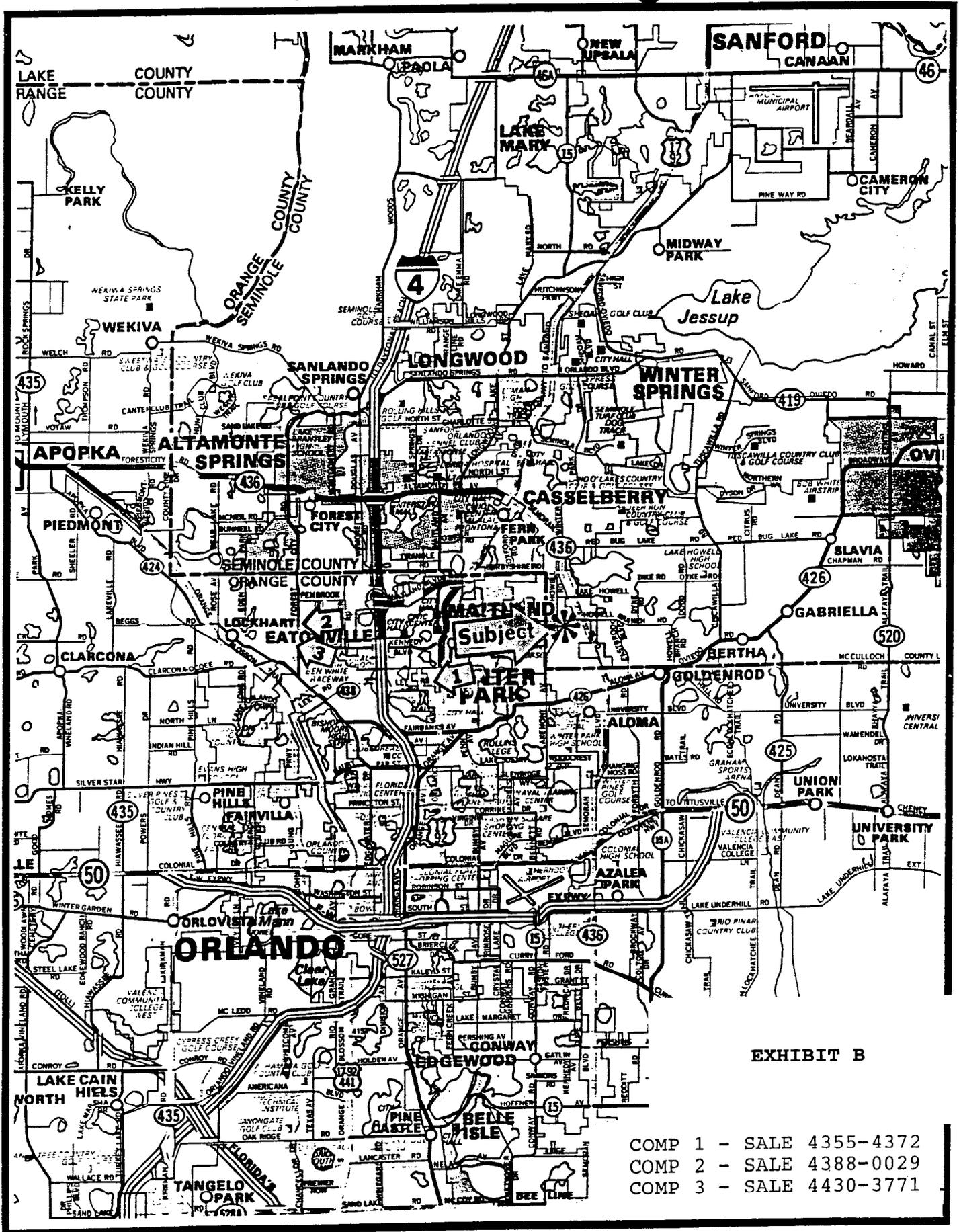


EXHIBIT B

- COMP 1 - SALE 4355-4372
- COMP 2 - SALE 4388-0029
- COMP 3 - SALE 4430-3771

COMPARABLE IMPROVED SALES LOCATION MAP