



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

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

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

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
David Nichols, Principal Engineer/Engineering Division *DJ 1-23-07*

DATE: January 22, 2007

RE: Authorization to issue Offer of Judgment
Bunnell Drive
Parcel No. 143; Mosley
Seminole County v. Moran, et al.
Case No. 2005-CA-1144-13-W

This Memorandum requests authorization by the Board of County Commissioners (BCC) to issue an Offer of Judgment on Parcel No. 143 at \$20,000.00.

I. THE PROPERTY:

A. Location Data

The subject property is located on the north side of Bunnell Road, approximately 332.01 feet west of Eden Park Avenue within unincorporated Seminole County, Florida. A location map is attached as Exhibit A.

B. Property Address

The street address is 1337 Bunnell Road, Apopka, Florida 32703. A Parcel sketch is attached as Exhibit B.

II AUTHORITY TO ACQUIRE.

The BCC adopted Resolution No. 2004-R-72 on April 13, 2004, authorizing the acquisition of Parcel No. 143. The Bunnell Road improvement project was found to be necessary and serving a public purpose and in the best interests of the citizens of Seminole County. The Order of Take occurred on August 22, 2005 for Parcel No. 143. Seminole County obtained title to Parcel No. 143 on August 31, 2005, the date of deposit of the good faith amount for Parcel No. 143.

III ACQUISITIONS AND REMAINDER

The acquisition of Parcel No. 143 is 3,305 square feet in fee simple from a parent tract of 62,855 square feet with a remainder of 59,550 square feet.

IV APPRAISED VALUES

The County's original report dated December 7, 2004, was prepared by Clayton, Roper & Marshall, Inc., and reported full compensation to be \$10,000.00. An additional report updated for the order of take hearing dated July 16, 2005, opines the value to be \$11,000.00 for Parcel No. 143.

On February 27, 2006, the County received the owners' appraisal report prepared by Erickson Appraisers, Inc., which opines full compensation for Parcel No. 143 at \$22,300.00.

V BINDING OFFER/STATUS OF THE CASE

The County's initial written offer was \$10,000.00.

VI ANALYSIS

An offer of judgment is a procedural device that is intended to impose a monetary risk on a party which refuses to accept a reasonable settlement offer. An offer of judgment, when made and accepted, settles the owners' compensation, damages, and statutory attorney's fees; however, it leaves the costs outstanding. Costs would then either be settled or determined by the Court.

If the owners reject an offer of judgment, it has no impact on settlement or statutory attorney's fees. However, it impacts the property owners' expert costs in two (2) ways:

(1) Expert costs are not reimbursed for time expended after the date of the rejection of the offer of judgment if a verdict or subsequent settlement is less than the offer of judgment amount, and

(2) The owners' experts have their compensation for trial preparation at risk; as a result, the experts may slack off on preparation and be more motivated to control their expenditure of time in trial preparation.

If an offer of judgment is not made, then the owners' experts may be encouraged to run up a tremendous number of hours and *prepare hard for trial* because reimbursement of costs by the County is limited only by what the court deems reasonable or unreasonable.

The recommended amount of the offer, \$20,000.00, is intended to cover the County's appraisal amount, plus an additional sum representing what the owners might reasonably anticipate obtaining by going to trial. Although the recommended offer amount is closer to the owners' appraisal than the County's appraisal, the difference between the offer and the County's appraisal is comparable to the owners' anticipated additional expert costs, which the County would avoid if the owners do not surpass the offer. Therefore, the offer puts a strong incentive on the owners to settle and avoid significant additional costs which the County might otherwise have to pay.

VII RECOMMENDATION

County staff recommends that the BCC authorize the issuance of an Offer of Judgment at the amount to be determined by the County Attorney's Office, not to exceed \$20,000.00. This amount is reasonable, given the respective appraisals of the County and the owners.

DGS/dre

Two (2) Attachments:

Exhibit A - Location Map

Exhibit B - Sketch

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EXHIBIT A



