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COUNTY ATTORNEY'S OFFICE
MEMORANDUM

TO: Board of County Commissioners

THROUGH: Robert A. ~~McMillan~~, County Attorney

FROM: Al Schwarz, Assistant County Attorney *AHS*
Ext. 5736

CONCUR: Pam Hastings, *PH* Administrative Manager/Public Works Department
David V. Nichols, P.E./Principal Engineer/Major Projects *DVJ*

DATE: January 19, 2006

SUBJECT: Settlement Authorization
Lake Drive road improvement project
Parcel Nos.: 139A and 139B/739
Owner(s): John Maratta for 139A; Mary Maratta for 139B/739
Seminole County v. Suero, et al.
Case No.: 2004-CA-2045-13-G

This memorandum requests settlement authorization by the Board of County Commissioners (BCC) as to Parcel Nos. 139A and 139B/739 on the Lake Drive road improvement project. The recommended settlement is at the total sum of \$111,475.00 for 139A and \$56,736.67 for 139B/739 inclusive of all land value, improvements value, cost to cure, severance damage, statutory interest, and total statutory attorney's fees, but exclusive of expert fees and cost reimbursements.

I PROPERTY

A. Location Data

Parcel No. 139A is located on the South side of Lake Drive. In the Before, Parcel No. 139A consists of 24,000 square feet and is improved with a single-family residence. See location Map attached as Exhibit A and a property sketch is attached as Exhibit B.

Parcel Nos. 139B/739 is located on the South side of Lake Drive. In the Before, Parcel Nos. 139B/739 consist of 3.355 acres (2.6 acres upland) and a 481 square foot temporary construction easement, and is improved with a single-family residence. See Location Map attached as Exhibit C and a property sketch is attached as Exhibit D.

B. Street Address

The street address for Parcel No. 139A is 1906 Lake Drive, Casselberry, Florida and for Parcel Nos. 139B/739 is 1910 Lake Drive Casselberry, Florida.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2002-R-70 on April 23, 2002 and Resolution No. 2004-R-75 on April 13, 2004, authorizing the acquisition of Parcel Nos. 139A and 139B/739 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 December 8, 2004, with title vesting in Seminole County on December 17, 2004, the date of the good faith deposit for these parcels in the amount of \$25,000.00 for Parcel No. 139A and \$28,900.00 for Parcel No. 139B.

III ACQUISITIONS AND REMAINDER

The acquisition consists of 6,170 square feet of land area for Parcel No. 139A. The remainder property for 139A will be 17,830 square feet. In the After, the structure will remain approximately within 12 feet of the right of way line.

The acquisition consists of .212 acres (or 9,233 square feet) of land area for Parcel No. 139B and a TCE in the amount of 481 square feet. The remainder property for 139B/739 will be 3.143 acres (2.388 acres upland). In the After, the structure will remain approximately within 96 feet of the right of way line.

IV APPRAISED VALUES

The County's original report dated March 9, 2004, by Paul M. Roper, MAI with Clayton, Roper & Marshall, Inc., reported full compensation for Parcel No. 139A to be \$25,000.00 and for Parcel Nos. 139B/739 to be \$26,750.00. The appraisal reports were updated on November 14, 2004, for the order of take hearing and opined values at \$25,000.00 for 139A and \$28,900.00 for 139B/739. Updated trial appraisals reported the values as of December 17, 2004, the date of the initial good faith deposit to be \$30,400.00 for 139A and \$36,000.00 for 139B/739.

The owners' appraiser, Gary M. Pendergast with Florida Real Estate Analysts, Inc., produced an appraisal report as of May 14, 2004 to opine compensation to be \$109,600.00 for Parcel No. 139A and \$98,200.00 for Parcel Nos. 139B/739. The owners then updated their appraisal report to incorporate changing market conditions to the date of deposit as of December 17, 2004, reporting full compensation to be \$128,900.00 for Parcel No. 139A and \$98,200.00 for Parcel Nos. 139B/739.

V BINDING OFFER/NEGOTIATION

The County's initial written offer for Parcel No. 139A was \$35,000.00. The County's initial written offer for 139B/739 was \$32,000.00. Mediation was held on September 2, 2005, and an impasse resulted. Immediately following mediation, the owners' attorney issued a reverse offer of judgment in the amount of \$50,600.00 regarding Parcel Nos. 139B/739. This means that if the owners obtained a verdict that met or exceeded \$50,600.00 at trial the owner's attorney would have received actual fees based on an hourly rate multiplied by time spent as opposed to 1/3rd (or 33%) of the benefit achieved. Continued negotiations ensued regarding Parcel Nos. 139A and 139B/739. The trial set for Parcel Nos. 139A and 139B/739 was scheduled to proceed on January 30, 2006.

Based on the updated appraisals, the County's position aggregated at \$67,000.00 for all parcels exclusive of interest, attorney fees, expert fees, and cost reimbursements.

Conversely, the owners' position aggregated at \$226,200.00 for all parcels exclusive of interest, attorney fees, expert fees, and cost reimbursements.

The proposed settlement is at \$143,099.00 for all parcels inclusive of statutory interest, but exclusive attorney fees, expert fees, and cost reimbursements. In a typical residential case, juries tend to meet or exceed a split in values which in the aggregate for all parcels in this case is \$146,600.00. However, this case involves a parcel (Parcel No. 139A) where the right of way line will be moving from 51 feet away from the residential structure to 16 feet away from the residential structure along a widened Lake Drive. The proposed settlement of \$143,099.00 is less than the split and reduces the risks as well as the additional costs and potential attorney's fees based upon actual time spent by proceeding to trial regarding these residential parcels.

VI ATTORNEY'S FEES AND COSTS

The statutory attorney's fee reimbursement for 139A totals \$18,975.00. The sum is statutorily computed (33% of the benefit) based upon the settlement sum of \$92,500.00 less the written offer of \$35,000.00 to produce a benefit of \$57,500.00.

The statutory attorney's fee reimbursement total for 139B/739 totals \$6,137.67. The sum is statutorily computed (33% of the benefit) based upon the settlement sum of \$50,599.00 less the written offer of \$32,000.00 to produce a benefit of \$18,599.00.

Expert fees and cost reimbursements for both Parcel Nos. 139A and 139B/739 will be determined at a later date.

VII COST AVOIDANCE

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

VIII RECOMMENDATION

County staff recommends that the BCC approve this negotiated settlement at \$111,475.00 for 139A and \$56,736.67 for 139B/739 inclusive of all land value, improvements value, cost to cure, severance damage, statutory interest, and total statutory attorney's fees of \$6,137.67 and \$18,975.00, regarding Parcel No. 139A and 139B/739 respectfully, but exclusive of expert fees and cost reimbursements.

AHS/dre

Attachments:

Exhibit A – Parcel 139A Location Map

Exhibit B – Parcel 139A Sketch

Exhibit C – Parcel 139B/739 Location Map

Exhibit D – Parcel 139B/739 Sketch

P:\USERS\DEDEGE\MY DOCUMENTS\MEMO\AGENDA ITEM LAKE DRIVE MARATTA 139A 139B 739 SETTLEMENT.DOC

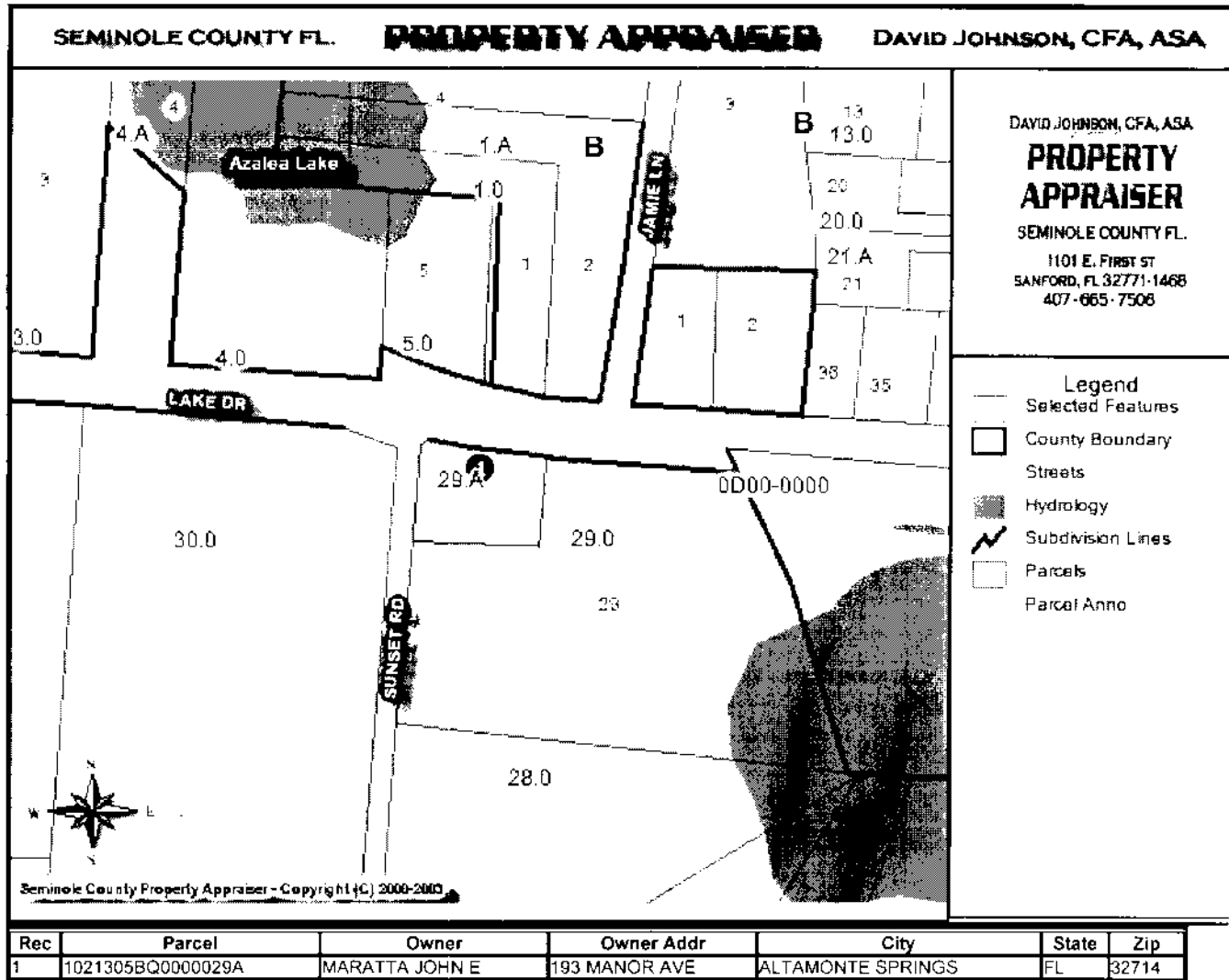
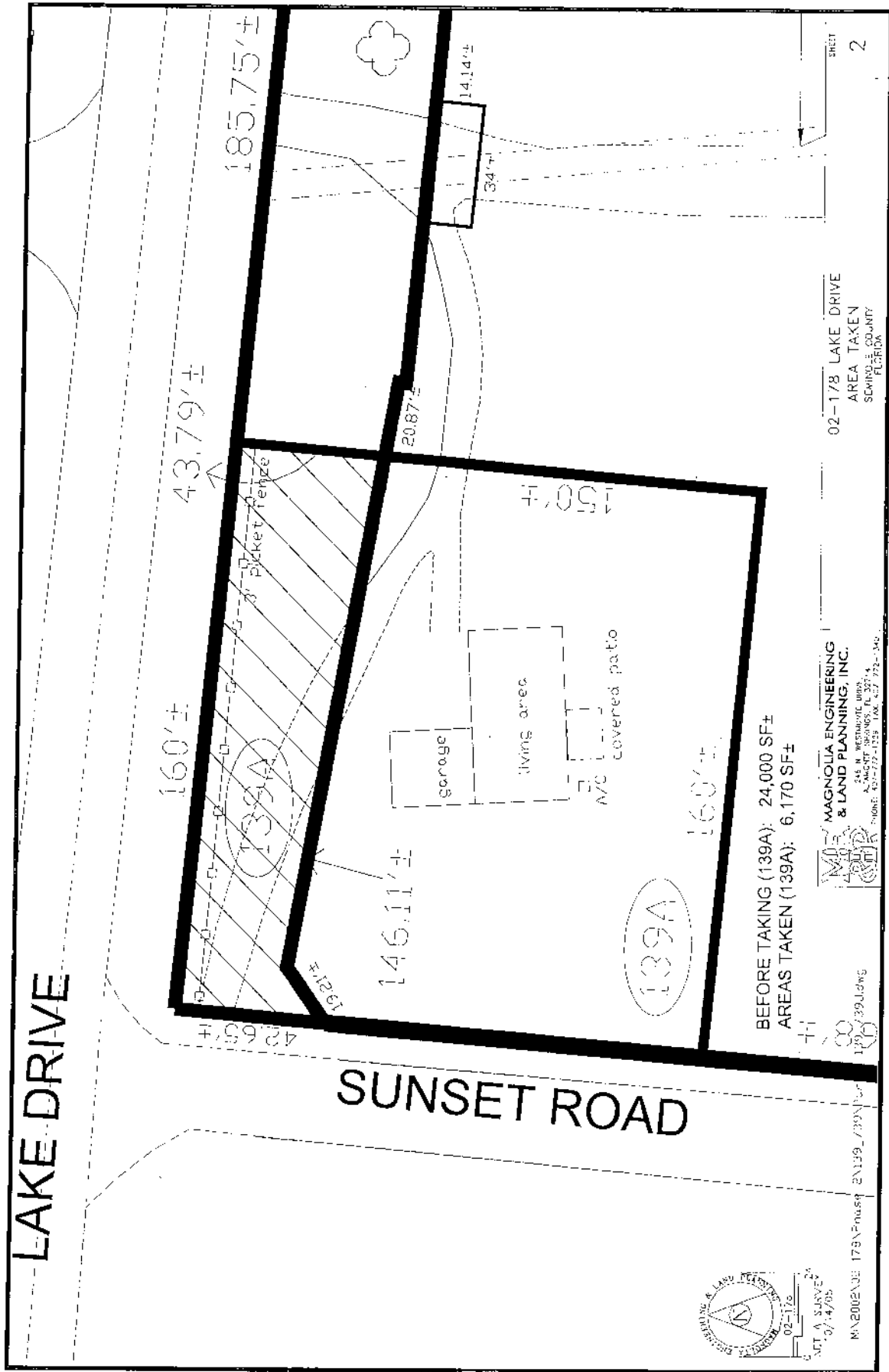


EXHIBIT A

SKETCH(S): PROPERTY SKETCH - TAKING



BEFORE TAKING (139A): 24,000 SF±
 AREAS TAKEN (139A): 6,170 SF±

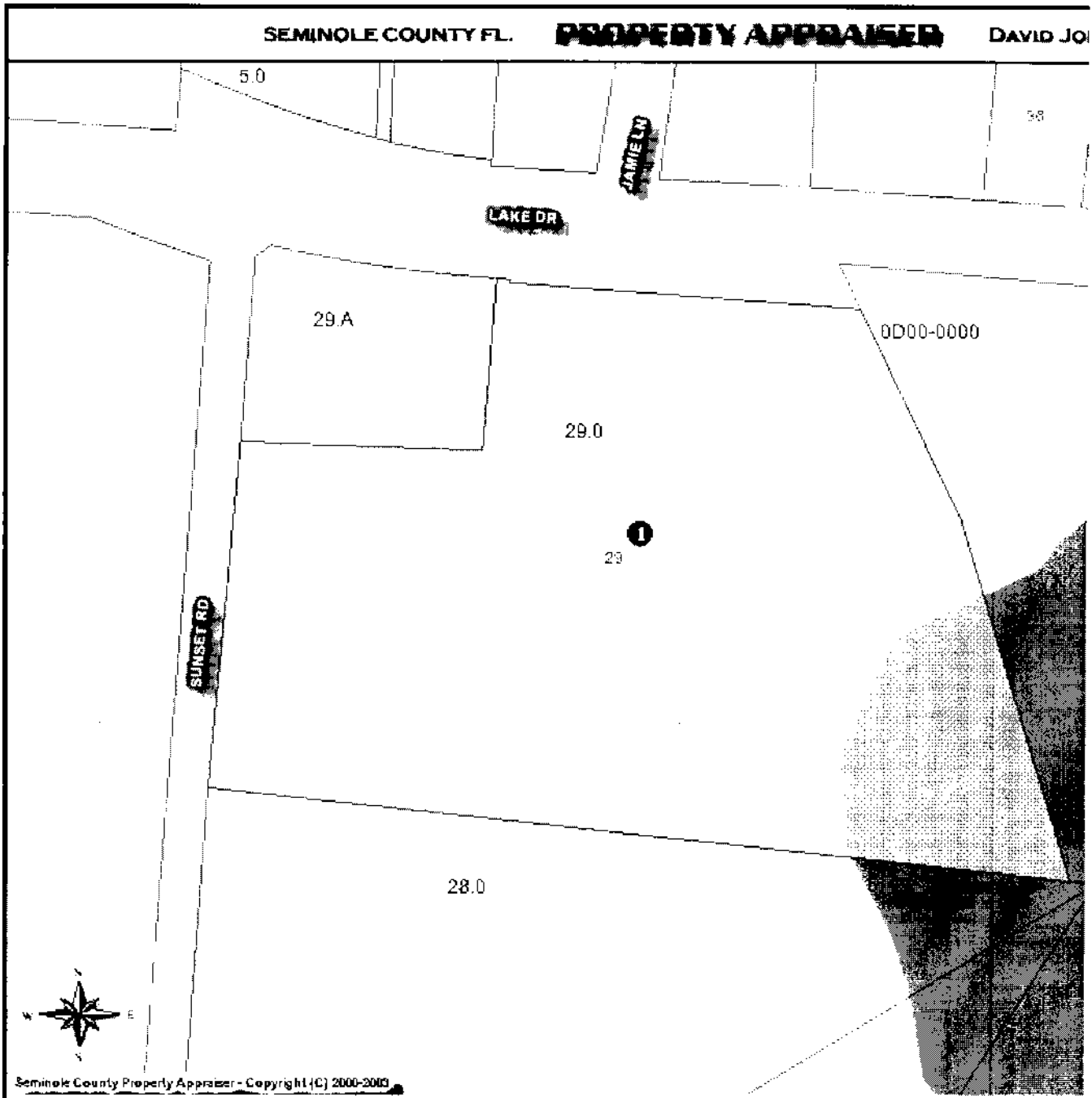
02-178 LAKE DRIVE
 AREA TAKEN
 SEMINOLE COUNTY
 FLORIDA

MAGNOLIA ENGINEERING
 & LAND PLANNING, INC.
 3410 W. UNIVERSITY BLVD., SUITE 100
 GAINESVILLE, FLORIDA 32608
 PHONE: 352-377-1222 FAX: 352-377-7222

MAGNOLIA ENGINEERING & LAND PLANNING, INC.
 02-178
 J. A. SANYAL
 2/14/05

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 1/29/05

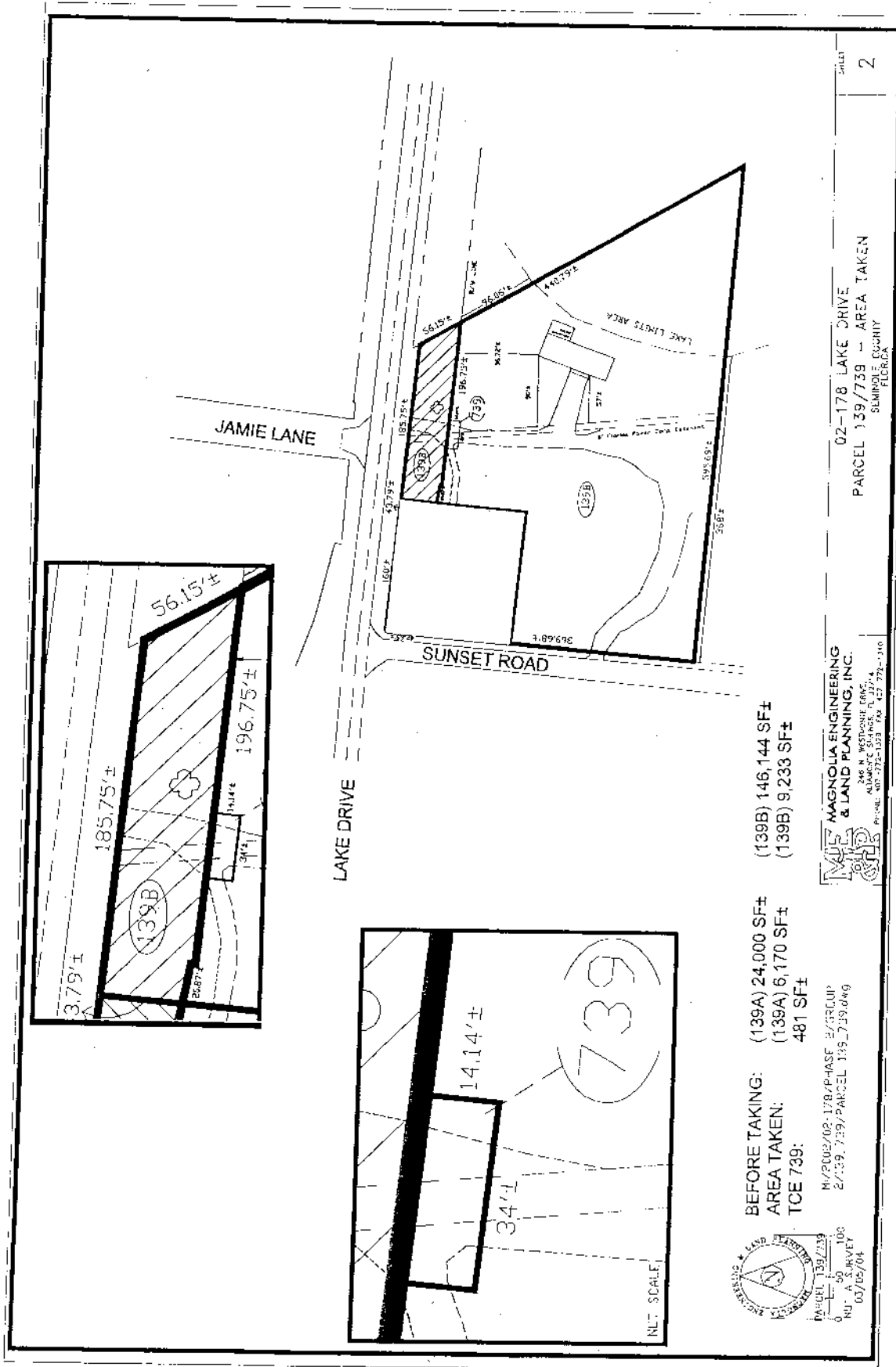
SHEET 2



Rec	Parcel	Owner	Owner Addr	City	State	Zip
1	1021305BQ00000290	MARATTA MARY E	1910 LAKE DR	CASSELBERRY	FL	32707

EXHIBIT C

SKETCH(S): PROPERTY SKETCH - TAKING





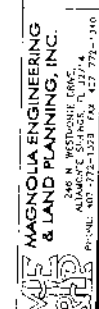
 PARCEL 139/739

 NY: A-54871

 03/02/04

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 2/13/19, 7/3/19/PARCEL 139_739.dwg



 MAGNOLIA ENGINEERING

 & LAND PLANNING, INC.

 246 N. WESTPORT ERMS.

 ALAMOGITO BLVD., # 1177-A

 SAN ANTONIO, TEXAS 78202-1528

 TEL: 214-772-3100

02-178 LAKE DRIVE

 PARCEL 139/739 - AREA TAKEN

 SUMMIT COUNTY

 FLORIDA