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**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

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

FROM: Lynn Vouis, Assistant County Attorney *[Signature]*

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

DATE: January 28, 2005

SUBJECT: Purchase Agreement Authorization
 Owners: Macel E. Lee and Dianne Gazil
 Parcel No. 143
 C-15/Elder Creek (Ponds) improvement project

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel No. 143. The parcel is required for the C-15/Elder Creek (Ponds) improvement project. The purchase price is \$466,000.00, inclusive of attorney fees and expert costs incurred by the property owners.

I THE PROPERTY

A. Location Data

The property is located along the north side of School Street and the southwest border of the Seaboard Coastline Railroad right-of-way in a portion of unincorporated Seminole County, Florida.

1. Location Map (Exhibit A);
2. Sketch (Exhibit B); and
3. Purchase Agreement (Exhibit C)

B. Address

4024 School Street
 Lake Monroe, FL 32747

Description

The parent tract contains 3.256 gross acres, and is improved with a home and barn which were built in the 1930's.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2003-R-121 on July 22, 2003, authorizing the acquisition of the referenced properties, and finding that the construction of the C-15/Elder Creek (Ponds) improvement project is necessary and serves a county and public purpose and is in the best interests of the citizens of Seminole County.

III ACQUISITION/REMAINDER

The County is acquiring the entire 3.256 acre property to use as a pond site.

IV APPRAISED VALUE

The County's appraised value amount as of August 12, 2003, was \$247,700.00. The County's appraisal was prepared by Florida Realty Analysts, Inc., and was approved by the County's MAI designated staff appraiser. Recent sales in the area value the property at \$425,494.08 as discussed below.

V BINDING OFFER/NEGOTIATIONS

On March 23, 2003, the BCC authorized a binding written offer in the amount of \$263,000.00 which was presented to the property owners. The property owners, through their attorney, Chris A. Draper, made a counter-offer in the amount of \$466,000.00, exclusive of attorney fees and costs. Thereafter, County staff negotiated a settlement agreement with the property owners and their attorney, in the amount of \$466,000.00, inclusive of all fees and costs incurred.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

There are many reasons why the purchase of this property through this settlement agreement is in the County's best interest. It is a fairly large whole take necessary for placement of Pond #4 in the Elder Creek/Ponds project. Large, undeveloped potential pond sites are difficult to locate in areas of rapid development. The hydraulics of the area also limit the number of suitable sites. The recent storms have illustrated the need for this project in order to improve drainage and flooding conditions in the area.

The area near the Sanford Towne Center Mall, where this property is located, is one of the most rapidly developing in the County. The County's appraisal reflects an August 2003 value of \$1.75 per square foot. Seventeen (17) months later the County's appraiser was asked to update his comparable sales to account for escalating market values in the area. The more recent sales were in the \$2.00 - \$3.50 range per square

foot. At a \$3.00 per square foot value, the property would be valued at \$425,494.08 (141,831.36 sf x \$3.00 per sf = \$425,494.08). Considering the updated per square foot values common in the area, the proposed settlement of \$466,000.00, inclusive of all fees and costs, is reasonable. If this parcel proceeds to litigation, it will be a few months until a date of take can be established, during which time the property values in the area will continue to climb.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$466,000.00, inclusive of all fees and costs.

LV/krc

Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

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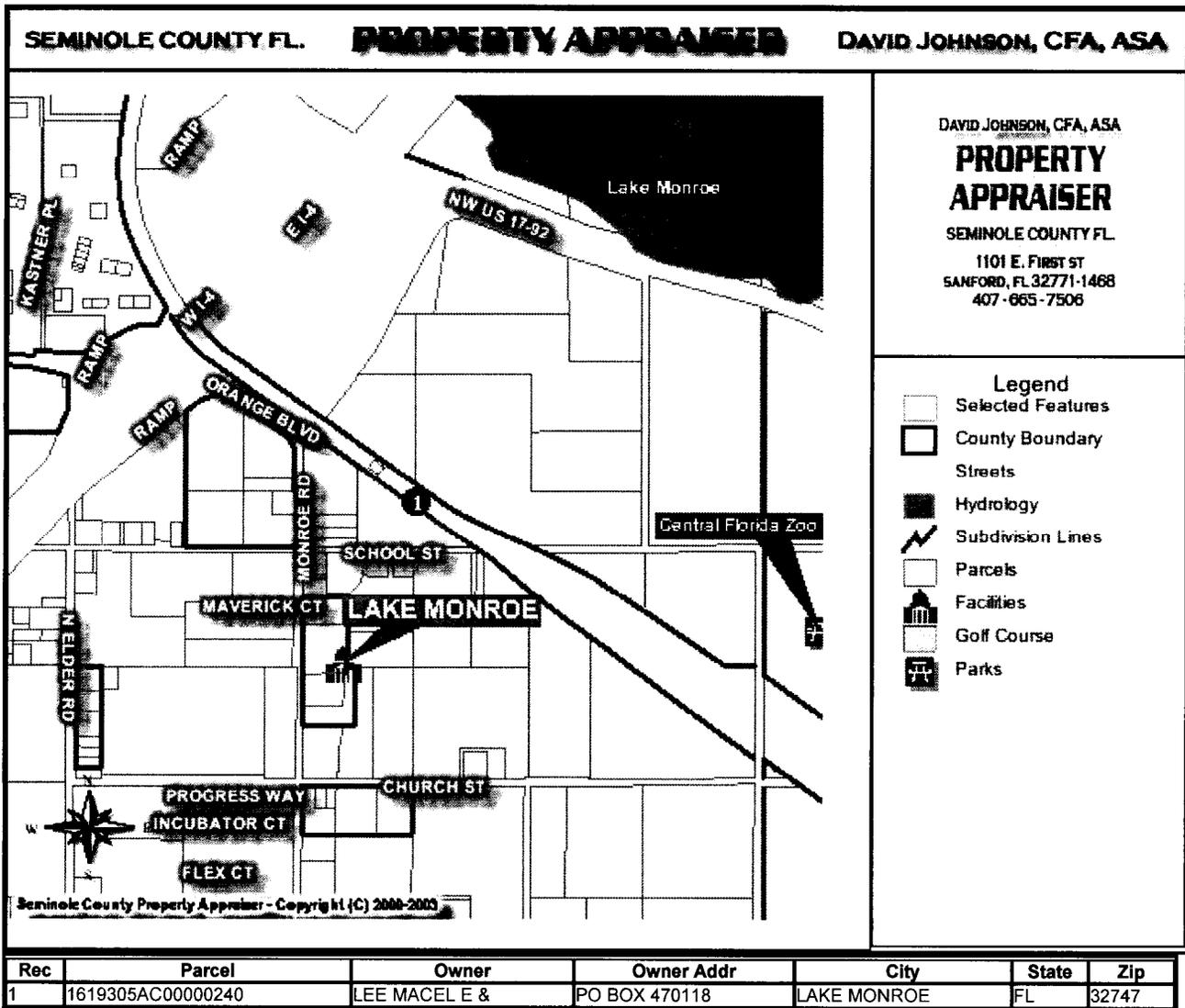


EXHIBIT A

ACQUISITION SKETCH

Parent tract 3.256 gross acres or 3.249 usable acres
Fee Acquisition 3.256 gross acres or 3.249 usable acres (Shaded Area)

PARCEL 143

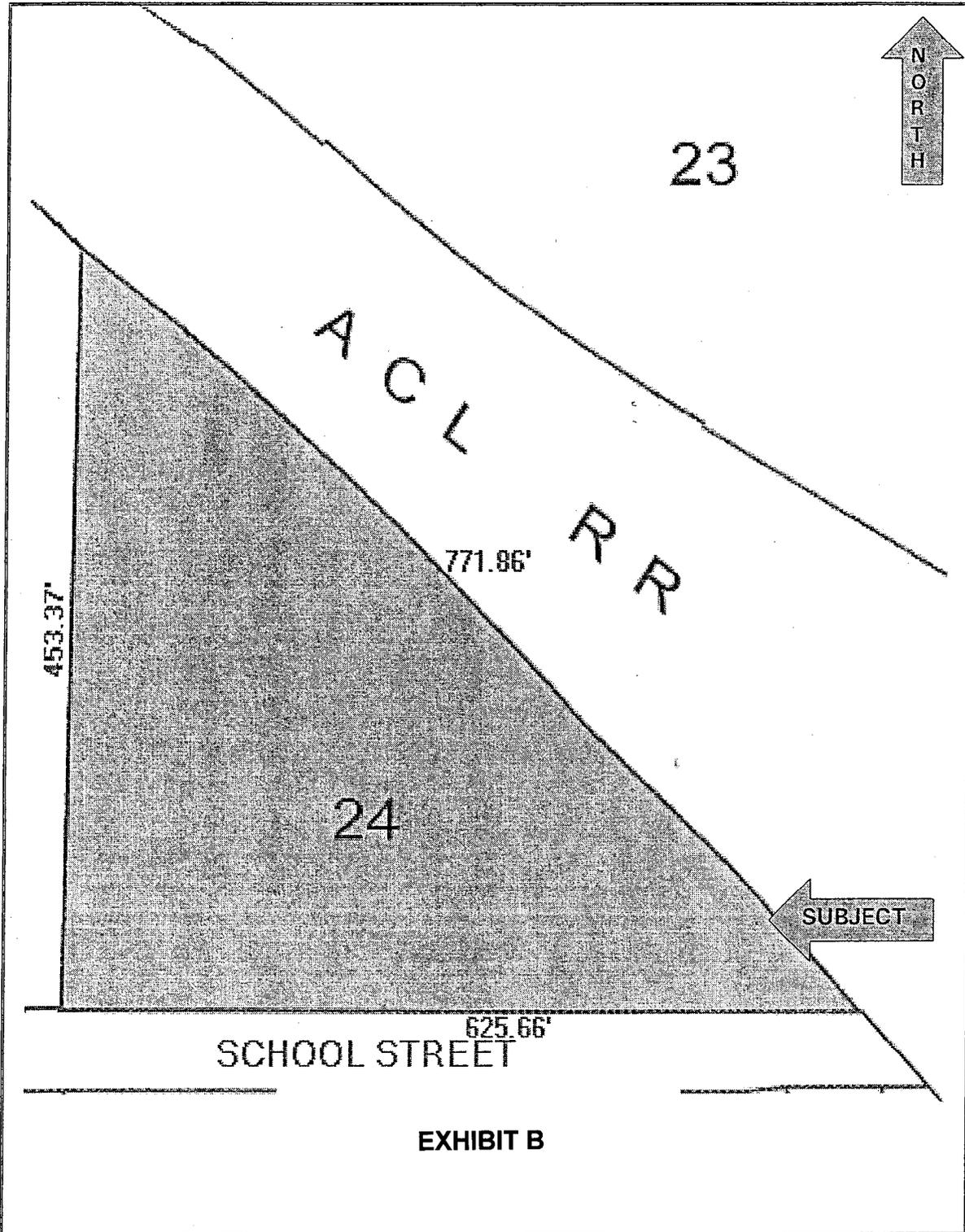


EXHIBIT B

Parcel No.: 143 Client: Seminole County
Project: C. R. 15 (Upsala Rd.)/Elder Creek Appraiser: Florida Realty Analysts, Inc.

**PURCHASE AGREEMENT
FEE SIMPLE**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this 24th day of January, 2005, by and between Macel E. Lee and Dianne Gazil, whose address is P. O. Box 470118, Lake Monroe, Florida 32747-0118, hereinafter referred to as "OWNER," 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 "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY requires the hereinafter described property for a regional stormwater facility/road improvement project in Seminole County;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, OWNER hereby agrees to sell and COUNTY hereby agrees to buy the following property upon the following terms and conditions:

I. LEGAL DESCRIPTION

See attached Exhibit "A"

Parcel I. D. Number: 16-19-30-5AC-0000-0240

II. PURCHASE PRICE

(a) OWNER agrees to sell and convey the above described property of the above referenced project by Warranty Deed, free of liens and encumbrances, unto COUNTY for the sum of FOUR HUNDRED SIXTY-SIX THOUSAND AND NO/100 DOLLARS (\$466,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever.

(b) COUNTY shall be responsible for the following closing costs: recording fees for Warranty Deed and Title Insurance Policy issued to the COUNTY by a title insurance company of the COUNTY's choice.

(c) OWNER shall be responsible for OWNER's own attorney's fees, cost to prepare and all expenses to record instruments necessary to provide title unto COUNTY, free and clear of all liens and encumbrances, and OWNER's share of the pro-rata property taxes outstanding, up to and including the date of closing. The before mentioned closing

EXHIBIT C

costs and pro-rata real estate taxes shall be withheld by the COUNTY's closing agent from the proceeds of this sale and paid to the proper authority on behalf of the OWNER.

(d) OWNER covenants that there are no real estate commissions due any licensed real estate broker and further agrees to defend against and pay any valid claims made in regard to this purchase relating to covenants made herein by the OWNER.

III. CONDITIONS

(a) COUNTY shall pay to the OWNER the sum as described in Item II., above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the designated closing agent. The OWNER agrees to close within seven (7) days of notice by the COUNTY or the COUNTY's closing agent that a closing is ready to occur.

(b) OWNER agrees to vacate and surrender possession of the property upon the date of delivery of the instruments and closing of this Agreement. COUNTY may, but is not obligated to, extend possession of the property by OWNER; provided, however, that such approval will be evidenced by a written document of equal dignity herewith. During the period from the date of the execution of this Agreement by both parties and the closing, OWNER agrees to exercise diligent care in protecting the property from theft and vandalism. All windows, doors, bathroom fixtures, electrical outlets, heaters and other similar items included in the purchase price, as well as the land itself, shall be preserved in normal conditions and turned over to the COUNTY by the OWNER, intact, if applicable.

(c) Any and all encroachments existing upon the property, other than those improvements included in the purchase price, are to be removed by the OWNER at the expense of the OWNER prior to closing.

(d) OWNER warrants that there are no facts known to OWNER materially affecting the value of the properties which are not readily observable by COUNTY or which have not been disclosed to COUNTY.

(e) The instrument(s) of conveyance to be utilized at closing shall, in addition to containing all other common law covenants through the use of a warranty deed, also include the covenant of further assurances.

(f) The OWNER shall fully comply with *Section 286.23, Florida Statutes*, to the extent that said statute is applicable.

(g) In the event that COUNTY subsequently abandons this project after execution of this Agreement, but before closing, this Agreement shall be null and void.

(h) In the event that difficulties arise as to clearing title sufficient to consummate a closing of this Purchase Agreement or difficulties occur in the issuance of a title insurance commitment which is acceptable to the COUNTY; this Agreement shall survive the filing of any eminent domain action by the COUNTY and shall serve as a joint stipulation regarding all valuation issues and fees and costs matters in any condemnation proceeding initiated by the COUNTY relating to the real property herein described. The OWNER agrees that, in accordance with any request made by the COUNTY, the OWNER shall execute any and all instruments, pleadings, documents and agreements upon litigation reflecting the full settlement as set forth herein. The OWNER agrees not to oppose the COUNTY's condemnation proceedings in any way. The OWNER, may however, assert OWNER's rights against other claimants in apportionment proceedings.

(i) As part of the consideration for this Purchase Agreement, OWNER hereby grants to COUNTY, its employees, agents, consulting engineers, contractors and other representatives the right to enter upon and to have exclusive possession of the property described in Exhibit A to this Agreement. The right of entry shall commence ninety (90) days after the execution of this Agreement by COUNTY, and shall continue until closing occurs, or if closing cannot occur, until the condemnation proceedings to acquire the property have been completed. Aside from this Agreement, no further notification of COUNTY's intent to enter the property is required. This right of entry is for the purpose of construction of the Elder Creek/C-15 road improvement project and so that the COUNTY's construction schedule can be maintained notwithstanding issues which may delay closing in a timely manner. OWNER will not receive from COUNTY any additional compensation beyond that set forth in this Purchase Agreement during the period of time the COUNTY occupies the above described property for the purpose set forth above for the right to enter and possess the property before conveyance of title.

(j) The OWNER shall indemnify and save the COUNTY harmless from and against all liability, claims for damages, and suits for any injury to any person or persons, or damages to any property of any kind whatsoever arising out of or in any way connected with this Agreement or in any act or omission in any manner related to said Agreement.

(k) The COUNTY shall be solely responsible for all of COUNTY activities conducted on the property. OWNER shall not be considered an agent or employee of COUNTY for any reason whatsoever on account of the Agreement.

(l) The OWNER states that the OWNER has not engaged in any action that would create a conflict of interest in the performance of OWNER's obligations under this Agreement with the COUNTY which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names on the date first above written.

WITNESSES:

SIGNATURE

Chris A Draper
CHRIS A DRAPER

PRINT NAME

SIGNATURE

Russell S. Galisher
Russell S. Galisher

PRINT NAME

WITNESSES:

SIGNATURE

Glynda D Wells
Glynda D Wells

PRINT NAME

SIGNATURE

Gaylene D. Coover
GAYLENE D. COOVER

PRINT NAME

PROPERTY OWNER:

Macel E Lee
MACEL E. LEE

ADDRESS: P. O. Box 470118
Lake Monroe, FL 32747-0118

PROPERTY OWNER:

Dianne Gazil
DIANNE GAZIL

ADDRESS: P. O. Box 470118
Lake Monroe, FL 32747-0118

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

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

By: _____
CARLTON D. HENLEY, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by the Board of
of County Commissioners at its _____,
2005, regular meeting.

[Signature]
County Attorney
LV/sb

01/07/05

Exhibit "A"

LEGAL DESCRIPTION

LOT 24 AND THE EAST ½ OF LOT 25, LYING SOUTH OF THE RAILROAD,
(LESS THE SOUTH 15 FEET FOR ROAD), W. BEARDALL'S MAP OF ST.
JOSEPH'S, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT
BOOK 1, PAGE 114, OF THE PUBLIC RECORDS OF SEMINOLE COUNTY,
FLORIDA.

CONTAINING: 155,250 SQUARE FEET / 3.56 ACRES, MORE OR LESS.

ALL OF PARCEL I. D. NUMBER: 16-19-30-5AC-0000-0240