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COUNTY ATTORNEY'S OFFICE  
MEMORANDUM

TO: Board of County Commissioners

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

FROM: Herbert S. Zischkau III, Assistant County Attorney *[Signature]*

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

DATE: February 25, 2004

RE: Eminent Domain Litigation for the Road Improvement Projects  
 Airport Boulevard, Phase III, Parcel Nos. 174 and 175, and  
 County Road 46A, Phase III, Parcel No. 119  
 Owners: A.K. Shoemaker Family Limited Partnership and  
 Shoemaker Construction Co., Inc.  
*Seminole County v. 7-Eleven, Inc., et al., Case No. 02-CA-1200-13-B*

This memorandum requests approval of a litigation settlement and authority to execute all documents required to implement same for the parcels shown above in the total amount of \$2,257,789.77, including \$141,393.02 for all claims, including attorneys' fees and costs, of the tenant (Clearshot Communications, LLC), \$1,900,000.00 for the land and \$216,396.75 for the owners' attorney's fees. The fees for the owners' experts are not included and will be resolved by the court.

**I THE PROPERTY**

**A. Location Data and Use**

Parcel Nos. 174 and 175 are located along the southwest corner of the intersection of Airport Boulevard and County Road 46A. Parcel 119 is located on the southwest corner of County Road 46A and Old Lake Mary Road. Parcels 174 and 175 were used by Shoemaker Construction Co., Inc. and a real estate service company, Sentry Sign Co. The parent tract of Parcel No. 119 was vacant.

- (1) Location Map (Exhibit A); and
- (2) Sketches (Exhibit B).

## **B. Addresses**

Parcels 174 and 175 are located at 2701 West 25<sup>th</sup> Street, Sanford. Parcel No. 119 is vacant and has no address.

## **II AUTHORITY TO ACQUIRE**

The BCC adopted Resolution No. 98-R-77 on April 14, 1998, for the Airport Boulevard Phase III road improvement project, authorizing the acquisition of Parcel Nos. 174 and 175, and finding that the construction of the Airport Boulevard Phase III road improvement project is necessary, serves a county and public purpose and is in the best interest of the citizens of Seminole County. The BCC adopted Resolution No. 2001-R-30 on February 13, 2001, for the County Road 46A Phase III road improvement project, authorizing the acquisition of Parcel No. 119, and finding that the construction of the County Road 46A Phase III road improvement project is necessary, serves a county and public purpose and is in the best interest of the citizens of Seminole County.

## **III ACQUISITION**

Parcels 174 and 175, totaling 3.06 acres more or less, are total takes, to be used as a stormwater retention pond for Phase III of the County Road 46A Road Improvement Project and Phases II and III of the Airport Boulevard Road Improvement Projects.

Parcel No. 119 was a corner clip of only 1,046 square feet from a much larger vacant corner tract. The corner clip is needed to improve the intersection of Old Lake Mary Road and County Road 46A.

## **IV APPRAISED VALUE**

The County's updated appraised values, as of the date of taking on October 15, 2002, were \$7,100.00 for Parcel No. 119; \$712,600.00 for Parcel No. 174; and \$459,300.00 for Parcel No. 175, for a total of \$1,179,000.00.

The Owners provided two appraisals for Parcels 174 and 175, one at \$3,150,000.00 and the other at \$2,400,000.00. The difference is that one appraiser treated the structure as a special use structure and valued it separately. The other owners' appraiser and the County's appraiser attributed no value to the structure as the highest and best use of the property would require redevelopment of the parcels.

The tenant's appraisal of its leased estate in a part of Parcel No. 174, potentially for use as a cell tower, claimed \$127,500.00 as compensation for the tenant's loss of its leasehold rights.

## **V BINDING OFFERS AND NEGOTIATIONS**

The County's binding written offers, as authorized by the BCC, were \$661,128.00 for Parcel No. 174 (originally appraised at \$635,700.00); \$445,410.00 for Parcel No. 175 (originally appraised at \$424,200.00); and \$7,875.00 for Parcel No. 119 (originally appraised at \$6,300.00), for a total of \$1,114,413.00. The Owners' initial demand was \$3,000,000.00. The County also made written offers of judgment, as authorized by the BCC, in the amounts of \$864,126.00 for Parcel No. 174 and \$545,340.00 for Parcel No. 175, for a total of \$1,409,466.00, exclusive of attorney's fees and costs. Court ordered mediation was not successful and the case was scheduled for jury trial on February 9, 2004.

Extensive negotiations occurred at the last minute before trial was to begin, with the Owners' demands dropping to \$2,100,000.00, and the County's offer increasing to \$1,700,000.00, subject to BCC approval. The parties then agreed to compromise at \$1,900,000.00, subject to BCC approval. This proposal is subject to several terms as follows: (1) the County is responsible for settlement of the tenant's claim, however, the Owners are responsible for apportionment with all others claiming any interest in the property; and (2) the Owners will assign their apportionment rights against the tenant to the County; and (3) the County will not claim rent for the 15 months of extended possession that the Court gave Shoemaker Construction Co., Inc., between October 15, 2002, and January 31, 2004; and (4) the Owners will not claim legal interest for the period October 15, 2002, to the date of judgment; and (5) the Owners' attorney will not receive additional attorney's fees over and above the statutory percentage formula, giving up, for example, a claim for non-monetary benefits; and (6) the claims for the Owners' experts' fees and costs remain open and will be resolved by the trial court.

With respect to the tenant, staff elected to negotiate a settlement directly rather than have the tenant participate in the trial and cloud the issues with extensive testimony regarding the feasibility of locating a communication tower at that location. The County initially offered the nominal amount of \$30,000.00, exclusive of fees and costs and subject to BCC approval. Tenant's total demand for its leasehold interest, attorneys' fees and costs was \$190,000.00. The final settlement amount of \$141,393.02, inclusive of attorney's fees and costs, is subject to BCC approval and represents a reasonable amount of compensation for the lease and all fees and costs.

## **VI ANALYSIS**

The proposed settlements avoid exposure to a jury verdict in excess of the amounts agreed to. The issues to be tried included whether to value parcels 174 and 175 as a single parcel, whether the structure contributed no value to the land and the market value of this corner parcel. The County's appraisals and offers were all premised upon the ownership of the two parcels being in two different legal entities. In fact, both entities were owned or controlled by the Shoemaker family. The County's square foot market value of the corner parcel was higher than the per square foot value of the other parcel while the Owners treated the parcels as a single entity and applied the same per square foot price to the entire piece. There was a reasonable likelihood that the Judge would have allowed the issue to go to the jury. Had the jury accepted that both parcels should be treated the same and applied the County's higher land value

then the verdict could have increased by approximately 30% over the County's value. Use of the Owners' square foot price would have resulted in a verdict in the area of \$2,400,000.00. The other technical issue was the value, if any, to be attributed to the structure. The County's position was that the structure contributed no value at all as it would have to be removed to develop the parcel to its highest and best use. While the County's position is technically correct, the risk is that the jury would accept the common sense argument that the building is there, was in use until shortly before the trial was to begin and that the owners were forced to locate another structure in order to carry on their business. Jury acceptance of that argument could have added another \$1,000,000.00 to the verdict.

While losing both issues would have been the basis for an appeal, the risk of a large adverse verdict was real. Accordingly, a settlement and compromise made sense.

## **VII RECOMMENDATION**

Staff recommends that the BCC approve these respective settlements in the amounts of \$1,900,000.00, exclusive of fees and costs, for the Owners; \$216,396.75 for the Owners' attorneys' fees and costs; and \$141,393.02, inclusive of Tenant's attorneys' fees and costs, for Clearshot Communications, LLC. The total amount of these settlements is \$2,257,789.77. The County Attorney's Office further requests that the BCC authorize it to sign and file the documents required to have the appropriate judgment(s) entered by the court.

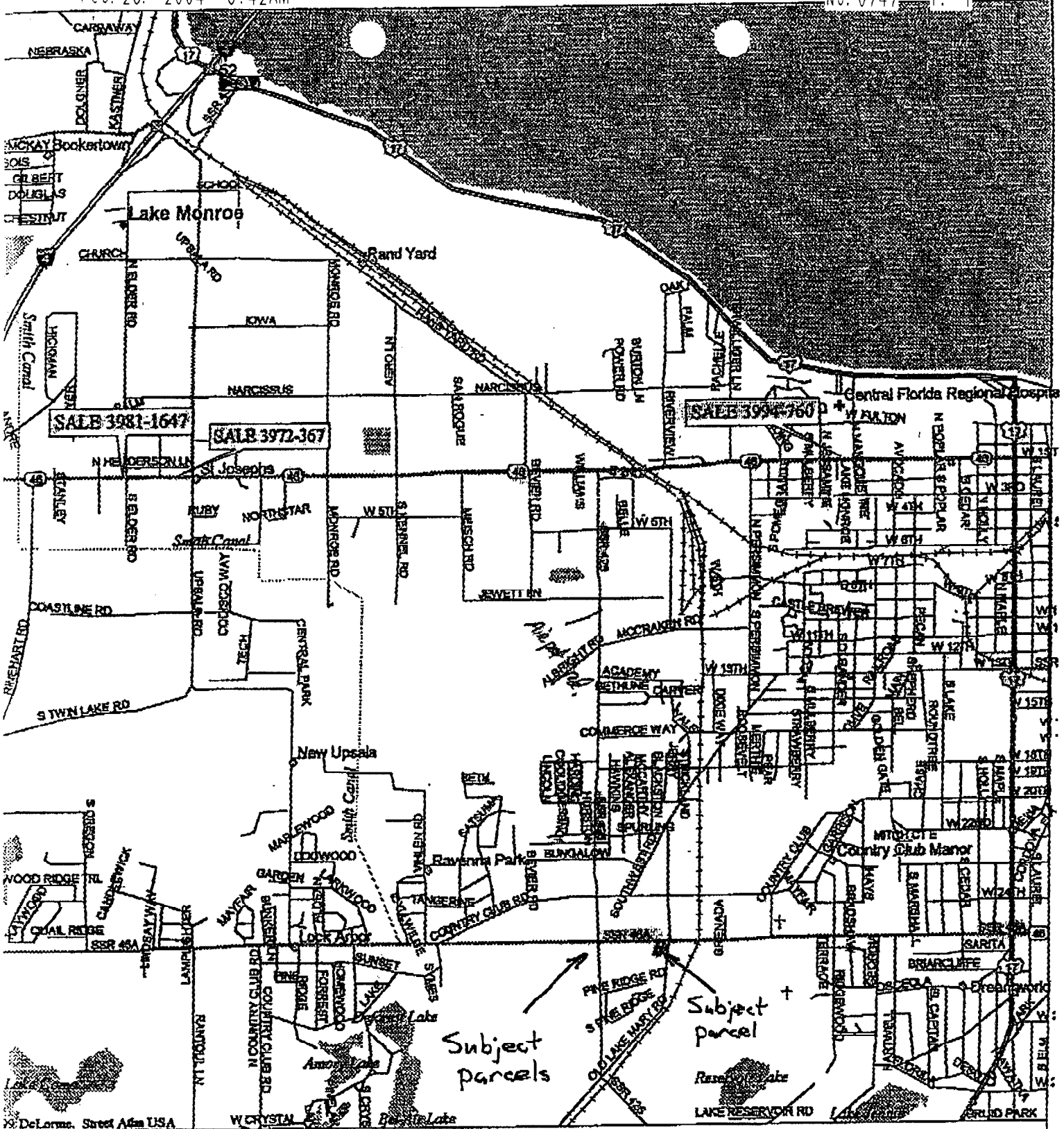
HZ

Attachments

Location Map (Exhibit A)

Sketches (Exhibit B)

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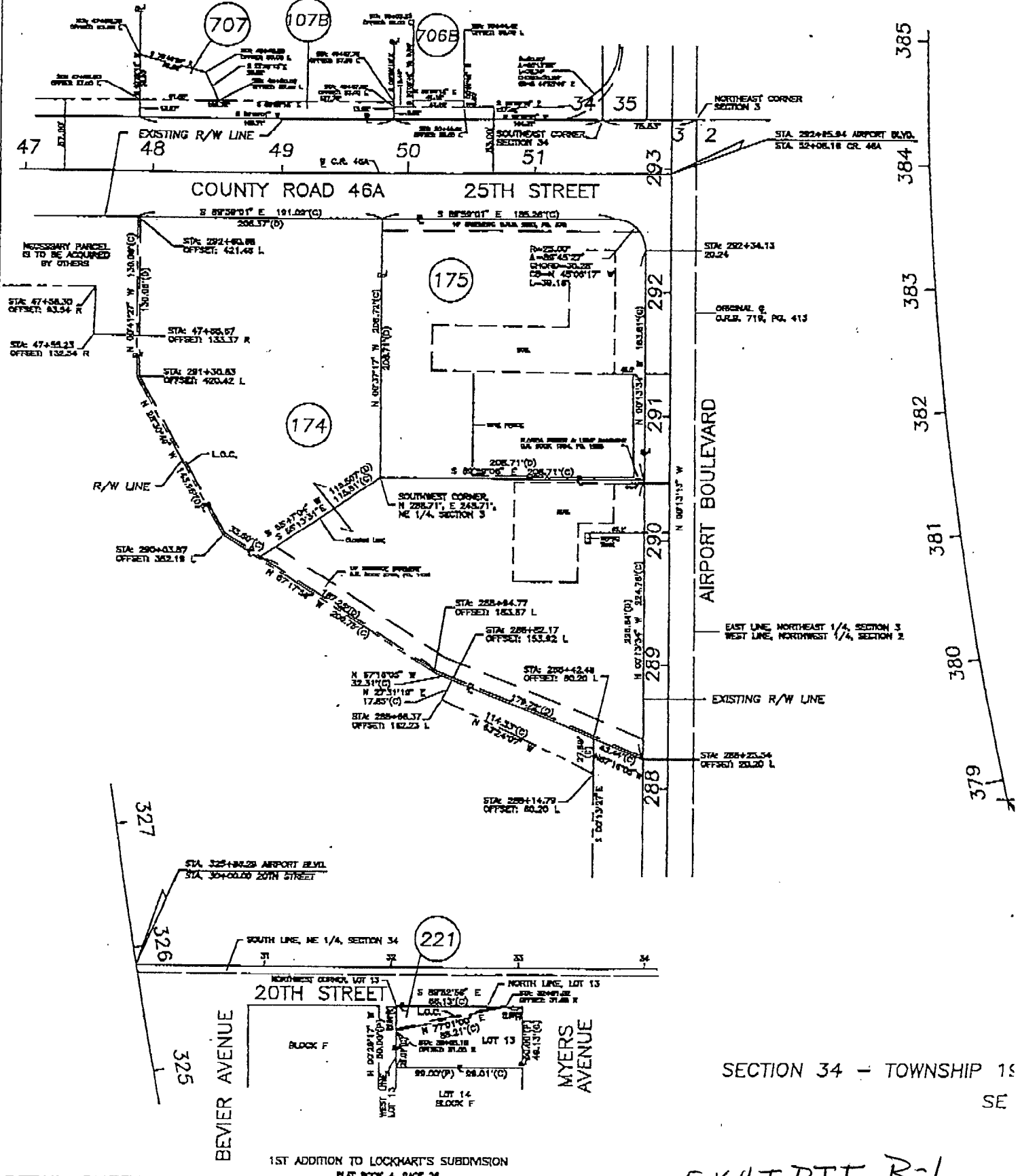


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| ● Ex/Food                   | ⊕ Hospital          |
| ▬ US Highway                | ▶ Ex/Other Services |
| ▬ Interstate/Limited Access | ◇ Locale            |
| ▬ Major Connector           | + Cemetary          |
| ▬ State Routes              | ▬ County Boundary   |
| ■ City                      | ▬ Water             |

EXHIBIT A

SECTION 3 - TOWNSHIP 20 SOUTH - RANGE 30 EAST  
NE 1/4



SECTION 34 - TOWNSHIP 19  
SE

DETAIL SHEET

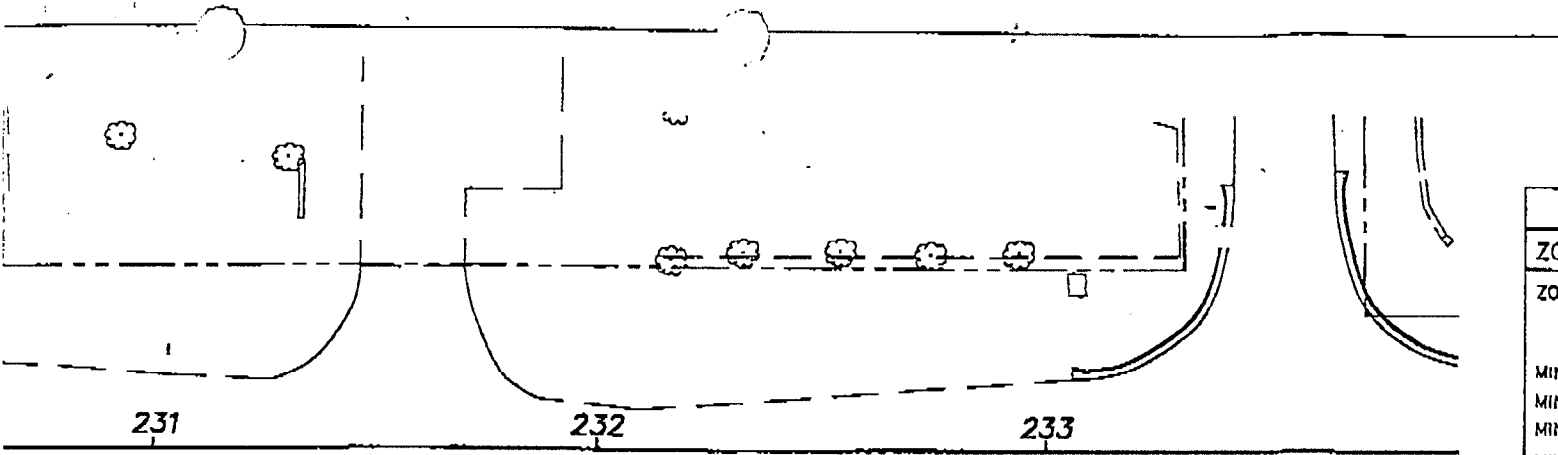
EXHIBIT B-1

RIGHT OF WAY MAP

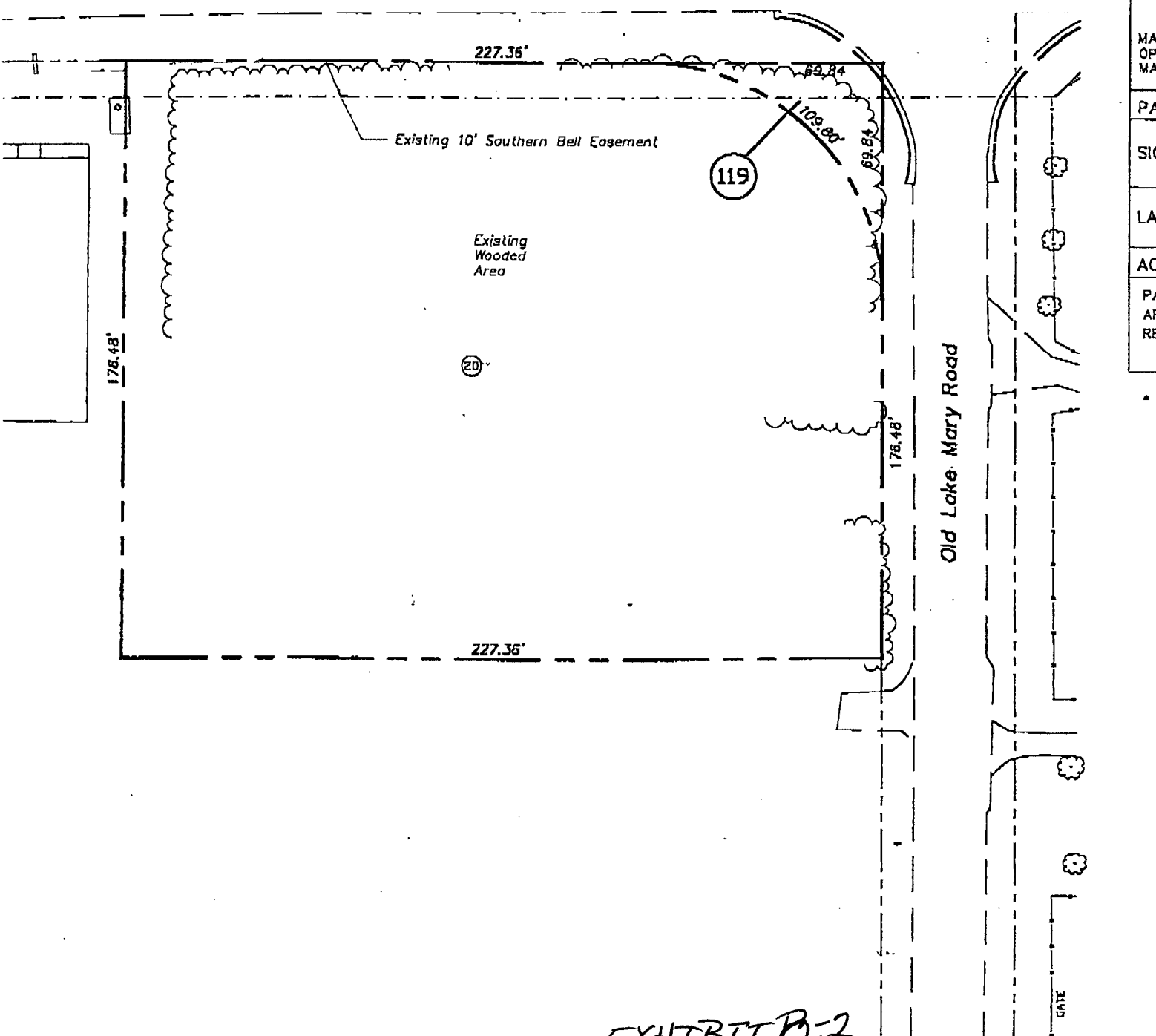
Received Time Feb. 26. 9:58AM

SEMINOLE COUNTY ENGINEERING DEPARTMENT  
RIGHT OF WAY MAPPING

APPROVED BY	DATE	



C.R. 46-A / 25th Street



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EXHIBIT B-2