

Item No. 25-A

SEMINOLE COUNTY ATTORNEY'S OFFICE
Add On Agenda
March 9, 2004

Action Requested:

Authorization to proceed as indicated.

Authorization:

 **County Attorney**

Christopher J. and Laura Cubberly property. **Approve** mediated settlement relating to Parcel Number 117 of the Airport Boulevard Phase III road improvement project, located along the southeast side of rerouted Airport Boulevard, Sanford, in the amount of \$40,836.90, inclusive of attorney's fees and costs. Judge Simmons



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

FROM: Stephen P. Lee, Deputy County Attorney
Ext. 5736 *[Signature]*

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

DATE: March 4, 2004

SUBJECT: Mediated Settlement Authorization
Airport Boulevard Phase III, Parcel No. 117
Seminole County v. Cubberly, et al.
Case No.: 03-CA-158-13-W
Owners: Christopher J. and Laura Cubberly

This memorandum seeks Board of County Commissioners (BCC) approval of a mediated settlement related to Parcel No. 117 on the Airport Boulevard Phase III road improvement project (the "Project"). Most of the flag-shaped acquisition was fee title to the vacant wetland area in the northern third of a roughly rectangular parcel that has two small buildings in the southern remainder of the property. The rest of the acquisition, the "pole" of the flag-shaped Parcel No. 117, is a strip along the eastern boundary to provide the County with additional rights to use and maintain the drainage canal that runs north-and-south along that eastern boundary. The recommended settlement is for the total sum of \$40,836.90, inclusive of attorney's fees and costs.

I PROPERTY

A. Location Data

The property that was acquired in this eminent domain proceeding lies on the north side of Country Club Road between its new terminus at the Greenway, S.R. 417, to the west, and Airport Boulevard, to the east, in Seminole County, Florida. See, Location Map and Sketch attached as Exhibits A and B, respectively.

B. Street Address

2724 Country Club Road, Sanford, Florida.

II AUTHORITY TO ACQUIRE

The BCC adopted the First Supplemental and First Amended Resolution No. 2001-R-108 on June 26, 2001, for the Airport Boulevard Phase III road improvement project, authorizing the acquisition of the above-referenced property, and finding that the construction of the Airport Boulevard Phase III road 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 AND REMAINDER

The fee simple acquisition consisted of 0.862 acre out of a parent tract containing 2.662 acres. The irregular somewhat flag-shaped acquisition (see sketch in Exhibit B) is mostly a vacant wetland (0.810 acre) in the northern third of the parent tract. The "pole" of the flag-shaped Parcel No. 117 is a 24.51-foot wide strip along the eastern boundary. There are two remainders. The larger remainder (1.723 acre) contains the two small buildings in the southern part of the parent tract that face the frontage on Country Club Road. The smaller remainder is the northeastern corner that forms a 58.96' by 108.65' by 124.82' triangle (0.077 acre) on the opposite side of the future Airport Boulevard.

IV APPRAISED VALUES

The County's appraisal report was prepared by Diversified Property Specialists, Inc. and reported a value for the land acquired of \$6,500.00.

The property owner's appraisal, dated October 10, 2002, claimed a value of \$80,400.00.

V MEDIATION

At mediation after the commencement of litigation, the parties agreed, subject to BCC approval, to a comprehensive settlement based on the following itemization:

\$25,000.00 - Compensation to the Owners for their land, severance damages, and all other possible damages.

\$ 8,975.00 - Owners' appraisal fees.

\$ 862.50 - Owners' expert witness on planning issues.

\$ 5,999.40 - Owners' attorney's fees

\$40,836.90 - Total settlement inclusive of attorney's fees and costs.

The dramatic difference in appraised values is based upon opposing views of the property's highest and best use. The County's appraisal assumes residential while the owner postulates commercial. The County established the land value as wetlands. The owner believes the wetlands can be developed with reasonable mitigation and assigns them almost the same per square foot value as the uplands, with a set off for the costs of mitigation. The proposed settlement recognizes the risk of a jury leaning more towards the owner than the County, thereby making a settlement of the land value at less than midpoint a reasonable compromise. The resulting attorneys' fees are set by statute and the other fees and costs are deemed reasonable under the circumstances.

VI RECOMMENDATION

Staff recommends that the BCC approve the mediated settlement for \$40,836.90, inclusive of attorney's fees and costs.

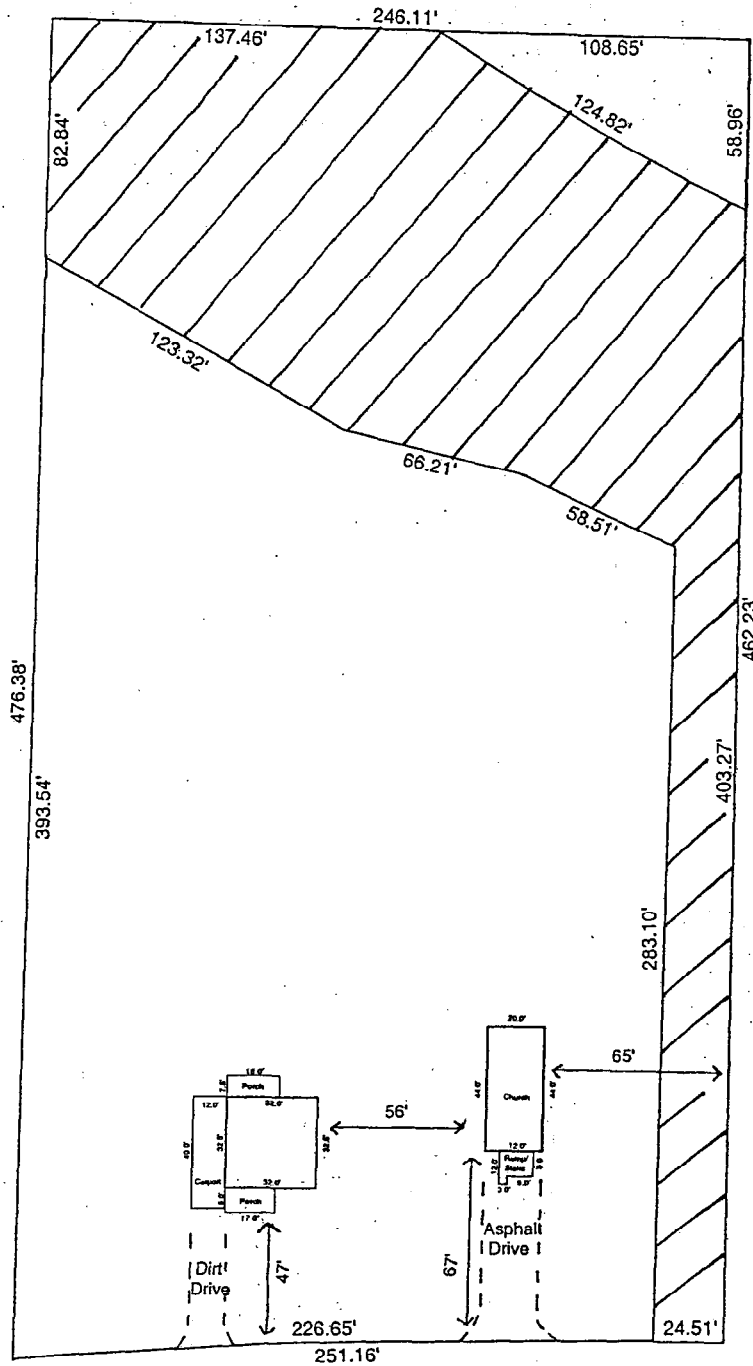
SPL/sb

Attachments:

Exhibit A – Location Map

Exhibit B - Sketch

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Country Club Road

Table 1: Upland/Wetland Acreages for Parcel 117

Tract	Upland (acres)	Wetland (acres)	Total Acreage
Taking	0.052	0.810	0.862
Remainder Right	0.021	0.056	0.077
Remainder Left	1.197	0.526	1.723
Parent Tract	1.270	1.392	2.662

N
Sketch Not To Scale

SKETCH WITH TAKING

27

EXHIBIT B