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**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

To: Board of County Commissioners

Through: Robert A. McMillan, County Attorney

From: Stephen P. Lee, Deputy County Attorney

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
 Randy Williams, Right of Way Permitting/Engineering Division

Date: March 24, 2005

Subject: Kuhnhausen v. Seminole County, Case No. 03-CA-1112-16-L

RECOMMENDATION: Approve settlement of the captioned lawsuit. If approved, the settlement will be accomplished by filing a stipulated final judgment.

BACKGROUND: Plaintiffs own a ten (10) acre parcel located in the northeast part of the County that is bisected by the County owned property known as "Old SR 13/North Hart Road" (hereafter the "SR13 ROW"). See the attached exhibit "A". The SR13 ROW is an abandoned railroad right-of-way that was acquired by the State and then transferred to the County. In 1992, the County issued a development order allowing the then owners of the parcel to use the SR13 ROW for access to their property. This development order was consistent with the then extant BCC policy regarding that portion of the SR13 ROW; a policy established after a study and public hearings. Plaintiffs now hold the property and the rights under the development order.

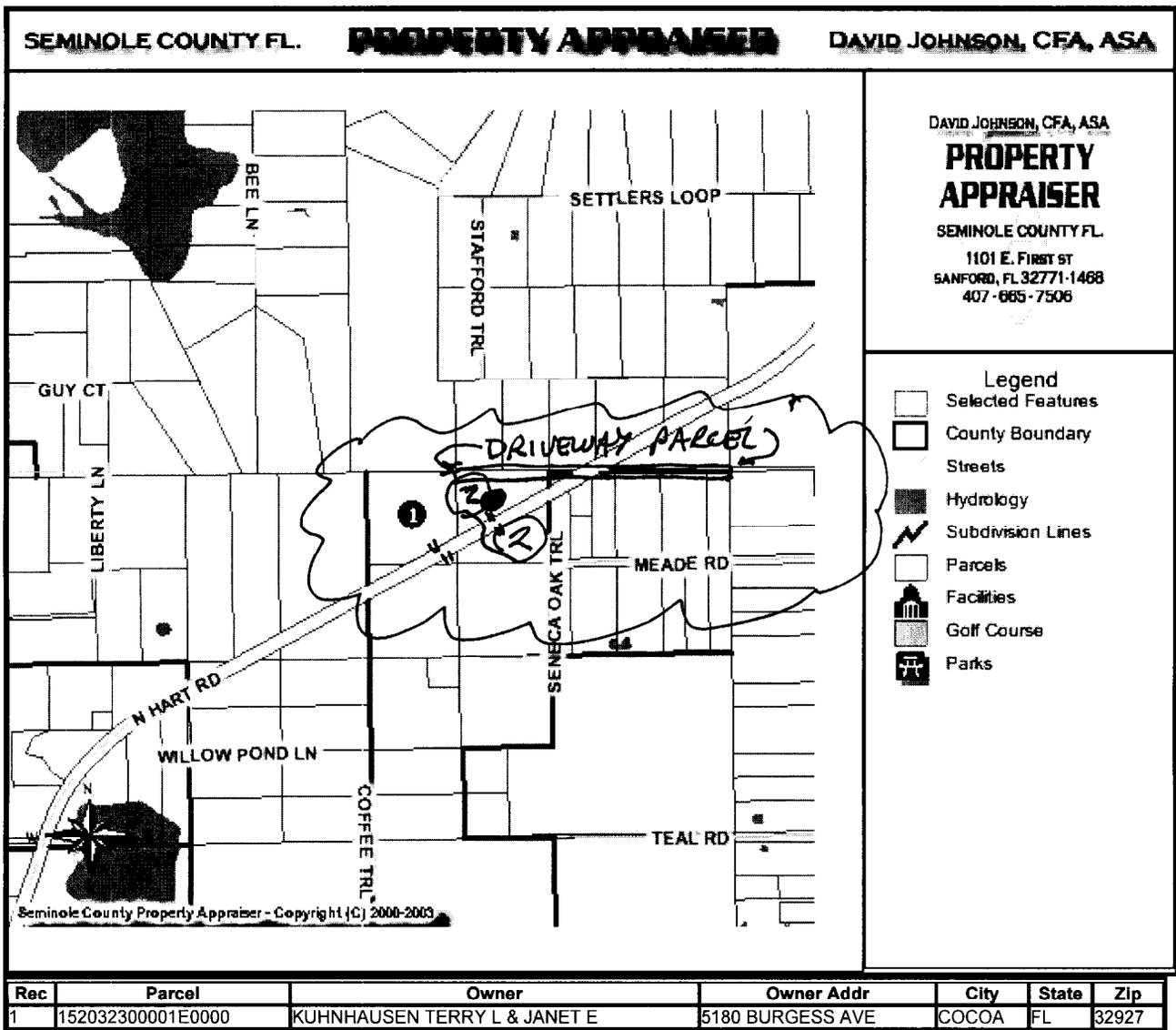
In the summer of 2003, Plaintiffs began the process of development of the property and made inquiry regarding use of the SR13 ROW. Ultimately they filed suit seeking a declaration of their rights under the development order as the County wanted to restrict their access to a portion of the SR13 ROW that has not been cleared and lies outside the area devoted to trails use. Plaintiffs argue that the development order allows them to use any portion of the SR13 ROW, including the old railroad bed (actually, a raised two rut dirt road) that now serves as part of the trails system. The County, while recognizing the right to use some portion of the SR13 ROW wanted to maintain the trail for pedestrian and equestrian use without interference from motor vehicles.

PROPOSED SETTLEMENT: The proposed settlement involves providing a different access to the Plaintiff's property through opening of a platted but undeveloped right-of-way and clearing and stabilizing a twelve (12) foot wide driveway running west from Harney Heights Road. The property owners to the east of Plaintiffs' property (Robert and Carol Walker) have agreed to convey an easement to Plaintiffs, provided that the County clears and stabilizes that area as well as the driveway located on the public right-of-way just mentioned. The proposed settlement also includes County payment of the recording fees for the Walker easement, processing fees for financial institutions to provide mortgage releases on the Walker easement area, and half of the survey costs. Also contributing to the settlement is Florida Power & Light which will remove several guying structures from the Walker easement area at no cost to the County. Upon completion of all the work, Plaintiffs will surrender all rights under the development order and will not use the SR13 ROW except where necessary to cross it as part of the driveway described above.

The County has until January 1, 2006 or six (6) months from entry of a court order approving the settlement, whichever first occurs, to complete the work. Should the County fail to accomplish all of the above then Plaintiffs may use the raised two rut road for their permanent access, a solution that, while not really satisfactory to the County, most likely mirrors what the Court would have ordered had the case gone to trial.

The total cost to the County is estimated to be approximately \$40,000.00, including the clearing, grading and stabilizing of the new driveway, costs and fees associated with the Walker easement and the County's share of survey costs. In exchange for this cost the County clears up a conflicting use of a trail facility and implements a better solution to a policy decision made many years ago to allow access to a landlocked parcel over the SR13 ROW.

RECOMMENDATION: Staff recommends approval of the proposed settlement as making the best of an awkward situation. Clearly the County intended to allow use of the SR13 ROW for access to this parcel, however, that decision was made more than ten (10) years ago. Current plans do not include vehicular access along the length of the SR13 ROW; crossings, however, are permitted. This solution converts the lengthwise access to a crossing access and minimizes pedestrian/equestrian/vehicular conflicts.



① = KUHNHAUSEN PROPERTY

② = WALKER PROPERTY

DRIVEWAY PARCEL = DRIVEWAY TO BE CONSTRUCTED BY THE COUNTY IF SETTLEMENT APPROVED.

EXHIBIT "A"