



COUNTY ATTORNEY'S OFFICE
MEMORANDUM

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *HMB*

FROM: Lynn Vouis, Assistant County Attorney *L.V.*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department *PH*
Kathleen Myer, Principal Engineer/Engineering Division *KM*

DATE: March 15, 2005

SUBJECT: First Amended And First Supplemental Resolution of Necessity
for Eden Park Avenue

It is necessary to amend and supplement the Resolution of Necessity No. 2004-R-73, Eden Park Avenue road improvement project, which was approved and adopted by the Board of County Commissioners on April 13, 2004. The supplement is necessary to add two additional parcels needed to be acquired, Parcel 102A and Parcel 119, which had not been previously identified in the right-of-way maps or construction plans.

The amendment changes the language in Section 5 of the Resolution. That section describes the temporary construction easements to be acquired by the County, including the acceptable uses and duration of the easements. The original resolution of necessity stated that the temporary easements would run for five years from the commencement of construction or ten years from the date of the resolution, whichever occurred first. Recent case law invalidated similar easements and this proposed change corrects the problem.

This amended resolution provides that the easement time period begins with the date of acquisition of the easement by the County and runs for no more than five (5) years. Upon approval of this amended resolution, this language will be added to all future resolutions.

LV:krc

Attachment:

First Amended and First Supplemental Resolution of Necessity

RESOLUTION NO. 2005-R-____

SEMINOLE COUNTY, FLORIDA

**FIRST AMENDED AND FIRST SUPPLEMENTAL RESOLUTION
(Eden Park Avenue)**

**THE FOLLOWING RESOLUTION WAS ADOPTED BY THE
BOARD OF COUNTY COMMISSIONERS OF SEMINOLE
COUNTY, FLORIDA, AT ITS REGULARLY SCHEDULED
MEETING OF _____, 2005.**

WHEREAS, Eden Park Avenue (from S.R. 414 (Maitland Boulevard) to Bunnell Road) is an existing roadway in the County road system which travels through a developing area with a high volume of traffic; and

WHEREAS, this First Amended and First Supplemental Resolution of Necessity is necessary to amend and supplement Resolution of Necessity Number 2004-R-73, which was approved and adopted by the Board of County Commissioners of Seminole County on April 13, 2004; and

WHEREAS, the Board of County Commissioners of Seminole County desires to adopt a First Amended and First Supplemental Resolution for the Eden Park Avenue project in order to modify Section 5 of the previously adopted resolution, and to add additional Parcel Numbers 102A and 119 to the list of required parcels enumerated in Resolution of Necessity Number 2004-R-73; and

WHEREAS, the existing right-of-way along Eden Park Avenue is inadequate for proper utilization as required by vehicular traffic volumes. Additional traffic lanes and improved drainage facilities are necessary to reduce safety hazards and improve traffic flow. The property hereinafter described is being acquired for use as right-of-way for new sections of roadway, additional traffic lanes and for improved drainage facilities on Eden

Park Avenue to be used by the public in general. Said property hereinafter described is necessary for roadways, rights-of-way, drainage facilities, and related facilities for the use of the general public including, but not limited to, rights-of-way, drainage facilities and other roadway improvements; and

WHEREAS, as established in Resolution Number 2004-R-73, it is necessary, serves a County and public purpose, and is in the best interests of the citizens of Seminole County and the traveling public to widen the road and improve the appurtenant drainage facilities on or relating to Eden Park Avenue in order to enhance public transportation within Seminole County, to alleviate traffic congestion and to increase the safety of travel along said road; and

WHEREAS, Seminole County has heretofore caused the roadway's area of construction to be located and surveyed and has caused a right-of-way map for Eden Park Avenue to be prepared based upon and incorporating survey and location data; and

WHEREAS, additional legal descriptions of parcels needed for the widening of Eden Park Avenue and improvement of its drainage system and other appurtenant systems have been prepared based upon aforementioned survey and location data and the right-of-way maps; and

WHEREAS, the Board of County Commissioners of Seminole County desires to adopt a First Amended and First Supplemental Resolution for Eden Park Avenue to add the parcels herein described which are needed for improvements to the roadway and improvements of the drainage system on Eden Park Avenue.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA;

Section 1. The above recitals are adopted as findings and incorporated into the text of this Resolution.

Section 2. Section 5 of the Eden Park Avenue Resolution of Necessity Number 2004-R-73 is hereby deleted and the following substituted therefore:

Section 5. *The interests sought to be condemned designated as Eden Park Avenue Parcel Nos. 707, 714, 715C, 715D, 716 and 718 are temporary construction easements. The County's use of these parcels is for the purposes of (1) constructing roadway and drainage improvements within public rights-of-way; (2) constructing or modifying driveways, walls, and other structures affected by the roadway construction but which are not within the public rights-of-way; (3) storage and marshalling of equipment and materials during the roadway construction project, and (4) demolishing or clearing any structures, improvements or other features required to be removed in order to construct the roadway and drainage improvements, with full authority to enter upon, grade, regrade, excavate or otherwise construct such improvements as may be agreed upon by County and the property owner, provided however, that County shall, at the end of the term of this easement, return the premises to the condition existing immediately before County began use of the premises, any improvements or alterations agreed to by the*

*property owner and ordinary wear and tear excepted.
County's rights under this easement shall commence on the
day the easement rights are vested in the County through
agreement or court order, and end five (5) years after that
date.*

Section 3. The acquisition of the property described in Exhibit "A" attached hereto consisting of 2 pages and identified as Exhibit "A", 000001-000002, is hereby found to be necessary for said improvements to the extent of the estate or interest set forth as a part of each parcel's description. The Board of County Commissioners of Seminole County hereby finds and determines that the acquisition of these parcels (in addition to the parcels listed in Exhibit "A" in Resolution Number 2004-R-73) is necessary and serves a County and public purpose.

Section 4. The estates or interests sought to be condemned by these proceedings designated as Parcel Numbers 102A and 119 are to be acquired in fee simple for road construction and related purposes all being associated with roadway improvements for the Eden Park Avenue Improvement Project.

Section 5. The acquisition of the properties described in Resolution of Necessity Number 2004-R-73 is hereby ratified and confirmed and found to be necessary for said improvements to the extent of the estate or interest set forth as a part of each parcel's description. The Board of County Commissioners of Seminole County hereby finds and determines that the acquisition of these parcels is necessary and serves a County and public purpose.

Section 6. This Resolution amends and supplements Resolution of Necessity Number 2004-R-73 by amending the description for the temporary construction easements in Section 5, and by adding Parcel Numbers 102A and 119. The remaining provisions of Resolution of Necessity Number 2004-R-73 are hereby ratified and affirmed.

ADOPTED this _____ day of _____, 2005.

ATTEST:

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

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

By: _____
CARLTON D. HENLEY, Chairman

Date: _____

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

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

County Attorney

LV/krc

Eden Park Avenue
Right of Way Parcel number 102-A
Fee simple taking

That portion of:

the following described parcel as recorded in Official Records Book 1739, page 1402, subject to Right of Way deeds and agreements as shown in the plat of MCNEIL'S ORANGE VILLA as recorded in Plat Book 2, Pages 99 through 101, as shown in the plat of BEAR LAKE ROADS as recorded in Plat Book 4, Page 12, and QuitClaim deed as recorded in Deed Book 46, Page 191 of the Public Records of Seminole County, Florida,

The South 208.71 feet of the East 218.71 feet of Lot 76, MCNEILS ORANGE VILLA, according to the plat thereof as recorded in Plat Book 2, Pages 99 through 101, Public Records of Seminole County, Florida, Less the East 10 feet thereof for Public Right of Way, and Less Seaboard Coastline Railroad right of way, and Less Public Right of Way 20 feet wide and parallel to and adjoining the West side of said Railroad right of way in Section, 20, Township 21 South, Range 29 East.

Being more particularly described as follows:

That portion of Lot 76, MCNEILS ORANGE VILLA, according to the plat thereof as recorded in Plat Book 2, Pages 99 through 101, Public Records of Seminole County, Florida, lying southeasterly of the Seaboard Coastline Railroad right of way.

Subject to the Florida Power Corporation power easement as recorded in Deed Book 157, Page 80, Public Records of Seminole County, Florida.

Containing 178 square feet more or less.

The sketch for this description is shown on sheet 6 of 10 of the Seminole County, Eden Park Avenue Right of Way Map, work project number PS-569-00/BJC

THIS SKETCH IS NOT A SURVEY.

I hereby certify that this legal description is true, accurate and complete to the best of my knowledge and is in compliance with the minimum technical standards as set forth in chapter 61g17-6 of the Florida Administrative code.

Daniel A. Groves 2-17-05
Daniel A. Groves signature date
Florida Professional Surveyor and Mapper no. 4625
METRIC ENGINEERING INC.
2269 Lee Road, Suite 101
Winter Park, Florida 32789

EXHIBIT A
00001

Eden Park Avenue
Right of Way Parcel number 119
Fee Simple

Tract E, FOREST EDGE UNIT 1 AT COUNTRY CREEK according to the plat thereof as recorded in Plat Book 41, pages 66 through 68 of the Public Records of Seminole County, Florida
Containing 19632 square feet, (0.451 acres) more or less.

The sketch for this description is shown on sheets 3 and 4 of 10 of the Seminole County, Eden Park Avenue Right of Way Map, work project number PS-569-00/BJC
THIS SKETCH IS NOT A SURVEY.

I hereby certify that this legal description is true, accurate and complete to the best of my knowledge and is in compliance with the minimum technical standards as set forth in chapter 61g17-6 of the Florida Administrative code.

Daniel A. Groves 2-17-05
Daniel A. Groves signature date
Florida Professional Surveyor and Mapper no. 4625
METRIC ENGINEERING INC.
2269 Lee Road, Suite 101
Winter Park, Florida 32789

EXHIBIT A
000002