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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]*  
Ext. 5736

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

DATE: March 19, 2004

SUBJECT: Settlement Authorization  
County Road 427, Phase I  
Owners: Roberta Doskocz and Daniel J. Lefevre, as Co-Trustees  
*Seminole County v. Doskocz, et al.*  
Case No.: 99-CA-775-13-K  
Parcel No. 802

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This memorandum seeks Board of County Commissioners (BCC) approval of a proposed settlement related to Parcel No. 802 on the County Road 427 Phase I project. The acquisition was a permanent drainage easement along the right-of-way line. The recommended settlement is \$122,551.00 (\$77,500.00 for land value and \$45,051.00 for attorney's fees and part of the costs). The balance of the expert witness fees will be resolved by the Court. The settlement also requires the County to perform certain construction changes and corrections costing approximately \$4,000.00.

**I PROPERTY**

A. Location Data. The subject property is located along the east right of way of County Road 427 north of State Road 436 in Altamonte Springs.

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

B. Addresses.

2741 Ronald Reagan Blvd South, Altamonte Springs, FL 32701,  
f/k/a 107, 111 and 117 County Road 427 a/k/a North Longwood Avenue,  
Altamonte Springs, Florida.

## **II AUTHORITY TO ACQUIRE**

The BCC adopted Resolution No. 97-R-95 authorizing the acquisition of Parcel No. 802 and finding that the County Road 427 Phase I project was necessary and serves a county and public purpose and is in the best interests of the citizens of Seminole County.

## **III ACQUISITION AND REMAINDER**

Parcel No. 802 is a permanent drainage easement containing 4,677 square feet, 480 feet long and roughly 10 feet wide most of its length. It contains underground stormwater drainage pipes, several inlet grates, and swales and driveways on the surface. The Owners' remainder retains the same land area as in the before condition.

## **IV APPRAISED VALUES**

The County's appraisal report was prepared by Hastings and Spivey, Inc., and opined a value of \$22,800.00.

The Owners' appraisal was prepared by Weigel-Veasey Appraisers, Inc., whose opinion of value, including cures and damages, was \$277,150.00.

Most of the difference in the appraisals is due to the amount the Owners' appraiser attributed to the costs of cure (\$180,200.00) and severance damages (\$65,850.00).

## **V BINDING OFFERS/NEGOTIATIONS**

The County's binding first written offer was \$22,800.00. Prior to disclosure of its experts' reports, the Owners' attorney demanded \$500,000.00 as an informal counter-offer. At mediation the parties agreed to a list of conditions concerning the construction of the project improvements but did not conclude a monetary settlement. Further negotiations resulted in the proposal presented in this memorandum.

## **VI SETTLEMENT ANALYSIS COST AVOIDANCE**

This settlement resolves all claims except those of the Owner's two engineering firms. The main difference between the parties dealt with the cost to cure and severance damages. The Owners' expert engineers claimed that the swale area could subside, causing damage to the Owners' building which is relatively close to the right of way line and swale area. The County changed the construction plans to virtually eliminate the possible subsidence. These changes were agreed to because the County's contractor was still mobilized and able to make the changes in the field. The cost of the changes is a little less than \$4,000.00. By making these changes the Owners' claim for costs to cure was almost totally eliminated, leaving only the claim for

severance damages. This settlement compromises the severance damages, reducing them by approximately one third.

By this settlement, the County avoids the following potential additional costs:

- a. A potential jury verdict in excess of the component of the settlement calculated to compensate the owners for the acquisition, in the total amount of \$77,500.00.
- b. All statutory interest, which since 1999 could become material.
- c. A potential claim by the Owners for their attorney's fees for litigating the claims of the engineers whose expert fees the County Attorney's Office will challenge.
- d. Attorney's fees calculated as a percentage of the benefit to the Owners. This component is limited to \$18,051.00 by the settlement.
- e. The Owners' claim for its appraisal fees of \$34,000.00, which are reduced in the settlement to \$22,500.00.
- f. The settlement eliminates a claim for damages by reason of the alleged filling of a retention pond by the County's contractor on the Owners' remainder outside the County's easement.

Despite the wide disparity between the County's and Owners' appraisals, this is a favorable compromise. The \$77,500.00 component of the settlement, for payment to the Owners, is a substantial discount from the Owners' appraisal and, even eliminating the costs to cure from consideration, is a reasonable compromise of the County's exposure to claims for severance damages.

The design and construction changes were necessary in order to minimize the alleged cost to cure and complete construction of the project in an acceptable fashion. The settlement also includes a punch list of corrective actions that are primarily the contractor's responsibility.

The portion of the settlement attributable to attorney's fees and costs is reasonable. Under *Section 73.091, Florida Statutes*, the County must pay reasonable attorneys' fees and costs. The portion of the settlement attributable to attorney's fees and costs is calculated as follows:

\$18,051.00	Percentage attorney's fees (statutory calculation).
\$ 5,000.00	Compromise figure to cover all future attorney's fees incident to concluding the case.
<u>\$22,000.00</u>	Discounted appraiser's fee.
<u>\$45,051.00</u>	Total fees and costs component.

The advantage of the \$5,000.00 compromise figure is that it caps the County's liability to pay attorney's fees for both non-monetary benefits and further litigation over the roughly \$40,000.00 of experts' claims that remain outstanding. The claim for the non-monetary benefits arose from mistakes that the Owners alleged took place either in the design of drainage improvements in Parcel No. 802 or in the process of constructing those improvements. Seminole County has addressed those claims in the settlement by committing to certain tasks (the punch list of construction work remaining to be completed) that the Owners agreed would eliminate those damages.

## **VII RECOMMENDATION**

Staff recommends that the BCC approve this settlement in the total amount of \$122,551.00 (\$77,500.00 for land value and \$45,051.00 for attorney's fees and part of the costs), subject to apportionment among any other claimants and excluding claims for certain experts' fees.

HZ/SPL/dre

Attachments:

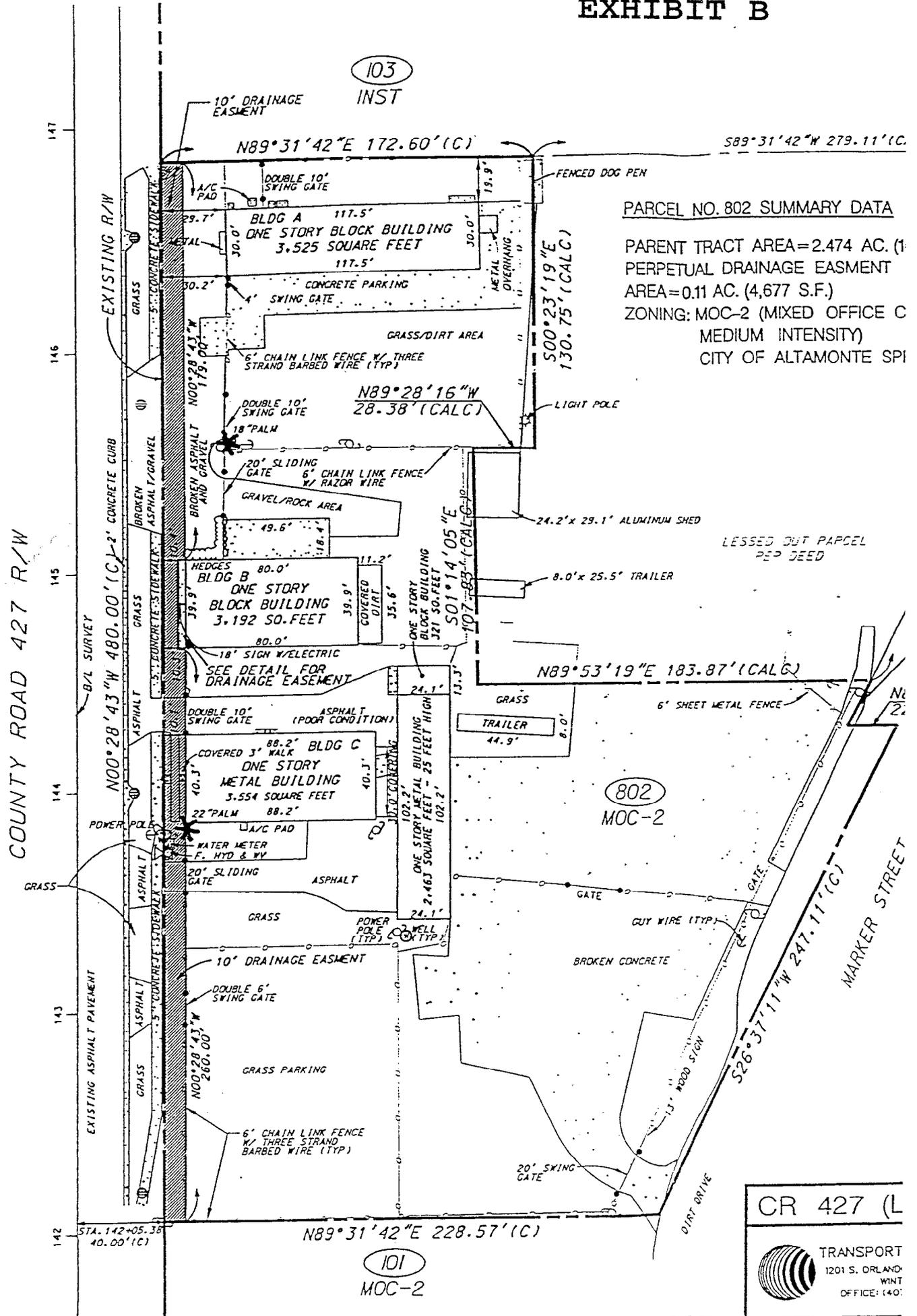
Location Map - Exhibit A

Sketch - Exhibit B

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# EXHIBIT B



### PARCEL NO. 802 SUMMARY DATA

PARENT TRACT AREA=2.474 AC. (1)  
 PERPETUAL DRAINAGE EASEMENT  
 AREA=0.11 AC. (4,677 S.F.)  
 ZONING: MOC-2 (MIXED OFFICE C  
 MEDIUM INTENSITY)  
 CITY OF ALTAMONTE SPI

COUNTY ROAD 427 R/W

CR 427 (L

TRANSPORT  
 1201 S. ORLANDO  
 WINT  
 OFFICE: (40