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COUNTY ATTORNEY'S OFFICE
MEMORANDUM

TO: Board of County Commissioners

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

FROM: Henry M. Brown, Assistant County Attorney Ext. 5736 *[Signature HMB]*

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

DATE: March 19, 2004

SUBJECT: Settlement Authorization
 Airport Boulevard, Phase III
 Parcel No.: 108
 Owner(s): Lewis E. White, individually and d/b/a Country Club Car Wash,
 W. Garnett White, individually and d/b/a Country Club Car Wash, and
 Paulette C. White
Seminole County vs. Lewis E. White, et al.
 Case No.: 2002-CA-2679-13-W

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) for Parcel No. 108 on the Airport Boulevard, Phase III Project. The recommended settlement is at the total sum of FORTY-TWO THOUSAND AND NO/100 DOLLARS (\$42,000.00) inclusive of all land value, severance damage, business damage, statutory interest, attorney fees and costs.

I PROPERTY

A. Location Data

Parcel No. 108 is a fee simple acquisition of 1,236 square feet. The strip take is at a depth of between 10' and 12' across the frontage of the property. A location map is attached as Exhibit A and a parcel sketch as Exhibit B.

B. Street Address

The street address is 1751 Airport Boulevard. The property is a commercial site improved with a drive-through car wash facility.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2001-R-108 on June 26, 2001, authorizing the acquisition of Parcel No. 108, and finding that Airport Boulevard, Phase III was necessary and served a public purpose and was in the best interest of the citizens of Seminole County.

III ACQUISITIONS AND REMAINDER

The fee simple acquisition consists of 1,236 square feet acquired from the total parcel of 18,878 square feet, leaving a remainder of 17,642 square feet. The building, car wash facility, parking areas and drive entrance were not impacted. However, a design error unnecessarily lowered the stormwater retention pond berm at the property. This opened the door for the assertion of business and severance damage claims. The car wash facility qualifies for business damages.

IV APPRAISED VALUES

The County's appraisal report was prepared by Diversified Property Specialists, Inc. and reported full compensation to be \$17,400.00 inclusive of land value, improvements acquired, and severance damage.

The property owner did not have an appraisal performed; however, the owners used Calhoun, Dreggors and Associates for consultation.

V BUSINESS DAMAGES

The owners prepared a business damage claim and asserted a business damage claim of \$93,813.10. The owner's engineer, Mid-Florida Construction Consultants, Inc., identified that the County's design plans entered into evidence at the Order of Take Hearing lowered the existing high sidewalk and frontage stormwater retention pond berm resulting in a loss of 1,536 cubic feet of the owner's pond capacity. The loss of capacity would have required reconstruction of an on-site 2,293 square foot retention pond expansion. The business damage claim was based almost totally on the lowered pond berm.

An engineering staff review of the lowered berm issue revealed that the lowering of the berm was not necessary. Fortunately, the project has not gone to construction. With the design error now corrected in the plans; the frontage pond capacity can be restored.

VI NEGOTIATION

The recommended settlement at \$42,000.00 is inclusive of all land value, severance damage, business damage, attorney fees and costs. The correction of the pond berm design error prior to construction took the steam out of the business damage claim.

VII ATTORNEY FEE AND COST REIMBURSEMENT

The owner utilized engineers, appraisers, and accountants; however, full written reports were not prepared. Reviews were made.

The owners have allocated the inclusive settlement sum \$33,000.00 to the owners for land, severance damage, statutory interest, and business damages. The sum of \$9,000.00 was allocated to the attorney fees and expert costs.

VIII COST AVOIDANCE

By this settlement, the County avoids the following additional costs beyond those for which it is already liable by law:

- a. A potentially excessive jury verdict;
- b. All potential business damages;
- c. All statutory interest;
- d. All mediation costs; and
- e. Continuing attorney fees and costs to proceed further.

IX ANALYSIS

The settlement sum at \$42,000.00 is totally inclusive. Fortunately, the design error was corrected prior to construction. The correction virtually eliminated the basis for the owner's business damage claim. However, it probably resulted in costs being higher and before a jury, the County would be faced with admitting the error with subsequent correction, not a desirable situation.

The inclusive settlement resolves all issues.

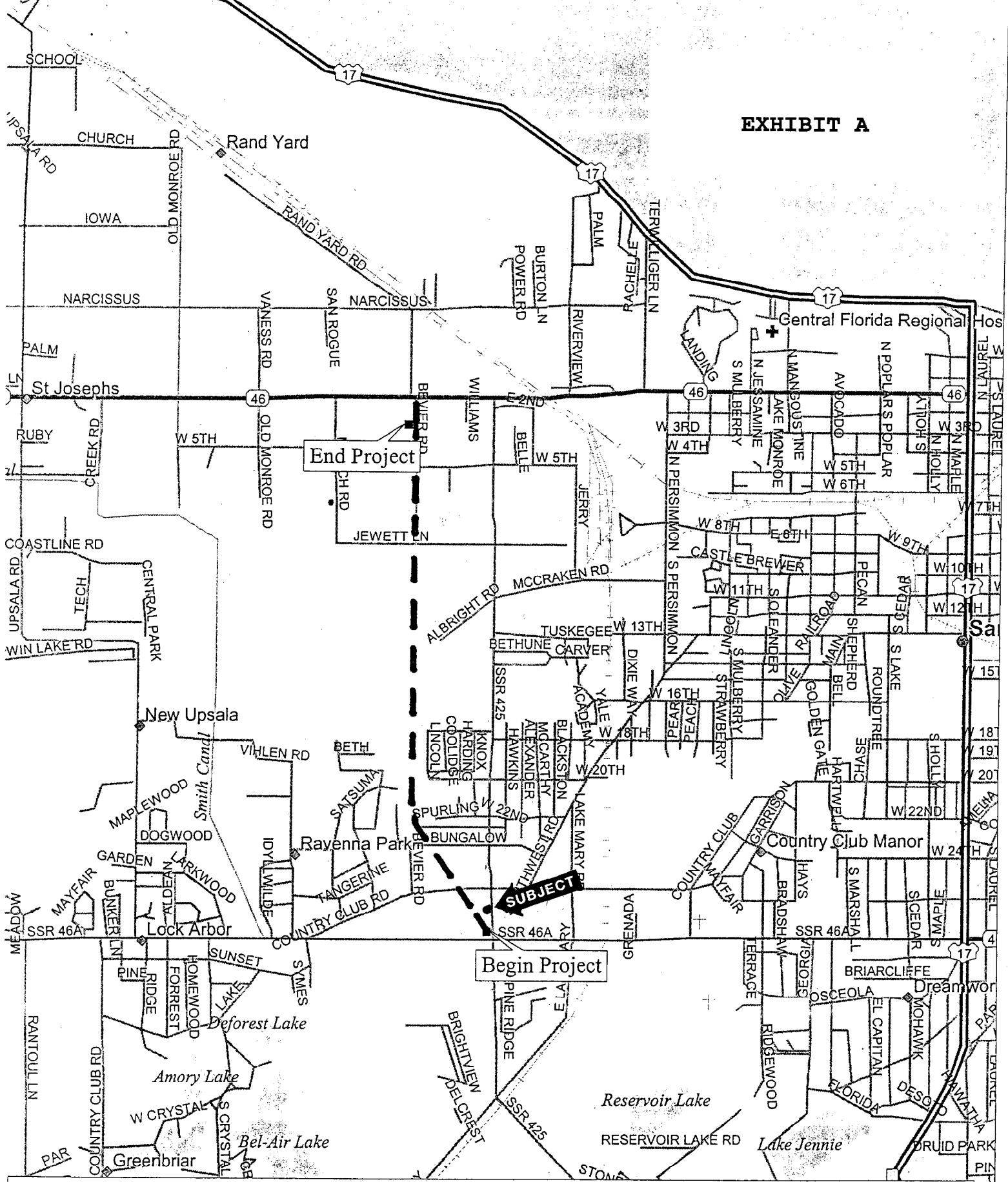
X RECOMMENDATION

County staff recommends that the BCC approve this settlement in the amount of \$42,000.00 inclusive of land value, severance damages, business damage, statutory interest, attorney fees and costs.

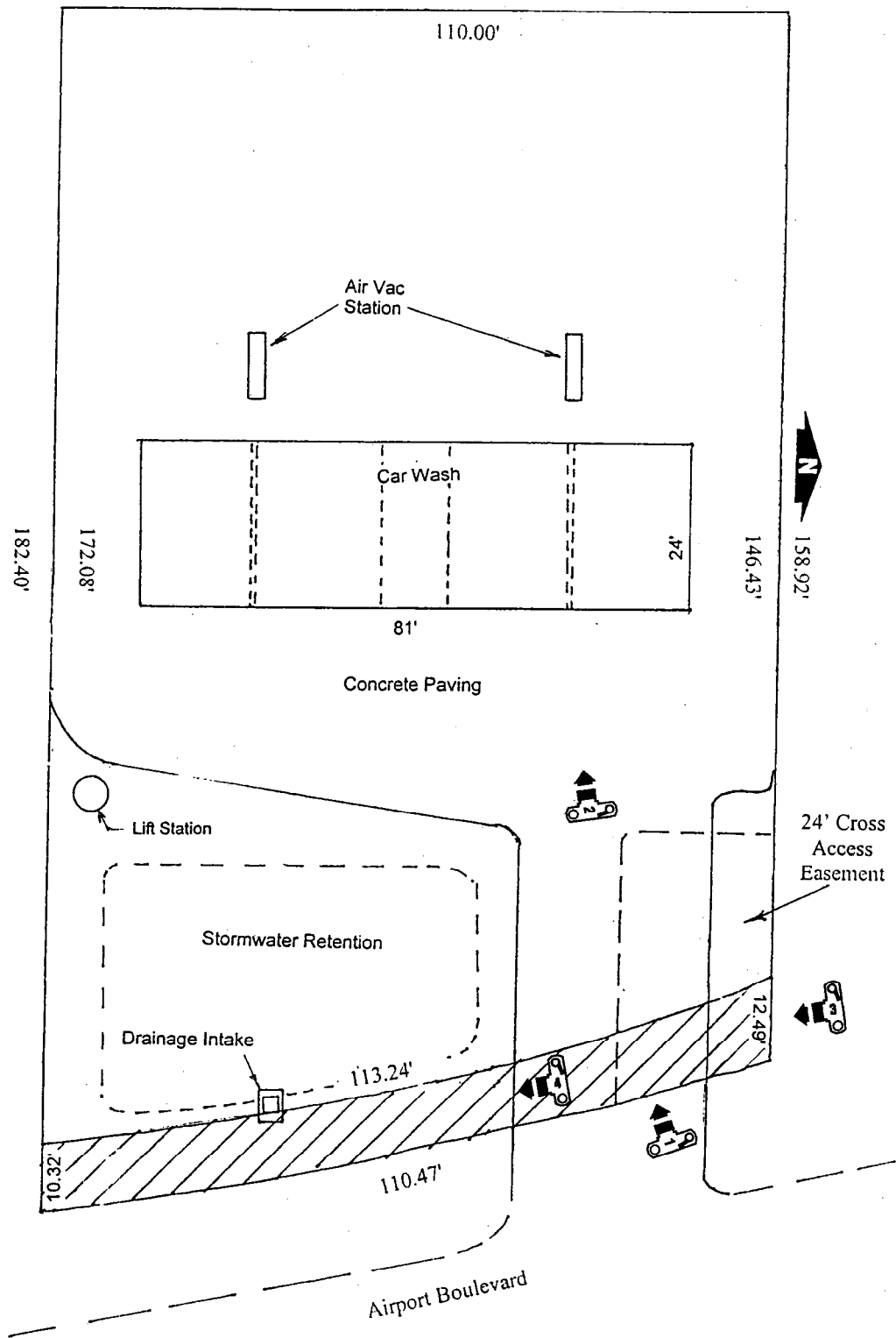
HMB/sb
Attachments
Exhibit A
Exhibit B

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EXHIBIT A



LOCATION MAP



Parent Tract:	18,878 sf	0.433 ac
Part Taken:	<u>1,236 sf</u>	<u>0.028 ac</u>
Remainder:	17,642 sf	0.405 ac

EXHIBIT B

PARCEL SKETCH WITH TAKING