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

DATE: March 22, 2004

SUBJECT: Settlement Authorization
Airport Boulevard Phase III, Parcel No. 152
Seminole County v. Cubberly, et al.
Case No.: 03-CA-158-13-W
Owner: David E. Lee

This memorandum seeks Board of County Commissioners (BCC) approval of a proposed settlement related to Parcel No. 152 on the Airport Boulevard Phase III road improvement project (the "Project"). This is a total acquisition of a rectangular parcel on the northeast corner of St. John's Parkway and Bevier Road that contained the owner's former residence. The recommended settlement is for the total sum of \$128,000.00, 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 east side of Bevier Road at the corner of St. John's Parkway (f/k/a Jewett Lane) along the boundary with Sanford in unincorporated Seminole County, Florida.

See Location Map and Sketch attached as Exhibits A and B, respectively.

B. Street Address

717 Bevier 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 the entire parent tract containing 15,876 square feet (0.364 acre). There is no remainder. Parcel No. 152 was composed of two platted lots, Lot 25 and Lot 26, in the residential West Haven subdivision of March, 1958. The house was also built in 1958. While the zoning has remained single-family residential, the Future Land Use was previously changed to HIP-Target Industry. In recent years, the Sanford Auto Auction was built on the entire block across St. John's Parkway from Parcel No. 152, and a smaller industrial enterprise was built across from it on Bevier Road.

IV APPRAISED VALUES

The County's initial appraisal report in November, 2001, was prepared by Diversified Property Specialists, Inc. and reported a value of \$65,000.00 for the house and land. Additional appraisals were done for the Order of Taking in May, 2003 (\$74,000.00) and in preparation for trial in February, 2004 (\$65,000.00). The final appraisal of \$65,000.00 benefited from an October, 2003, sale of a comparable residential property on the same block, which had not been available for the prior appraisals.

The property owner's appraisals, dated September 17, 2002, and January 9, 2004, claimed values of \$96,000.00 and \$100,000.00, respectively.

V BINDING OFFERS AND NEGOTIATIONS

The County's binding first written offer was in the amount of \$71,500.00, based on the first appraisal of \$65,000.00. On December 11, 2001, David Lee made a settlement demand through his attorney of \$160,000.00. After disclosure of experts' reports, the parties had an unsuccessful mediation.

With BCC approval, the County made an offer of judgment of \$84,000.00, which Mr. Lee rejected. His attorneys made two reverse offers of judgment, \$95,350.00 in April, 2003, and \$90,500.00 in December, 2003, which staff rejected as unreasonably high.

While negotiating this settlement, owner's attorney expressed the desire to obtain at least the reduced amount of \$88,000.00 for Mr. Lee and the discounted amount of \$20,000.00 for owner's appraiser. Using those two numbers merely for the sake of comparison (because the "inclusive" settlement does not bind the owner to reveal the actual allocation of the settlement proceeds), we can calculate a deduction of \$88,000.00 and \$20,000.00 from the \$128,000.00 total, which would leave \$20,000.00 to cover roughly one-third of the \$60,000.00 of hourly attorney's fees accrued by owner's attorneys. Thus, Seminole County necessarily receives a favorable discount from each of the three interests (owner, his attorneys and his experts) claiming parts of the \$128,000.00 settlement.

VI SETTLEMENT ANALYSIS AND COST AVOIDANCE

The divergence between the parties' appraised values arises from the difference between their appraisers' methodologies. The County's appraisal of \$65,000.00 was based on comparable sales nearby and the appraiser's conclusion that the abandoned Lee residence could be repaired to resume residential use while waiting for the neighborhood's trend toward industrial development to result in assemblage with other parcels for a future industrial use consistent with HIP-TI. The County's appraiser made adjustments for the poor condition of the Lee property.

The owner's appraiser, on the other hand, postulated a separate development of vacant Lot 25, giving it a value of \$15,000.00, in the hope of developing it with a 2-unit residential building after a zoning change. The County's appraiser had rejected this possibility as not being financially feasible because of inconsistent land use regulations and Lot 25's substandard area of only 7524 square feet, more or less. The owner's appraiser also used higher-priced sales from farther away to reach an elevated estimate of the value of the existing house, \$85,000.00, as if it were in average-to-good condition. One of owner's comparable sales was from Sanford's historical district, a higher-priced neighborhood, less affected by proximity to industrial uses. The owner's appraiser was therefore committed to testifying that the combined value of the house and lots was \$100,000.00.

The County's exposure was the possibility that the jury would accept part or all of owner's appraisal methodology combined with sympathy for someone who had lost his former family home. That sympathy factor could possibly elevate the jury's valuation above the midpoint between the two appraisals.

The agreed settlement value was reached as a compromise of the various demands by the owner's attorneys for their accrued hourly fees (about \$60,000.00), their costs for expert witnesses (about \$28,000.00), and compensation for their client

(\$90,500.00). The sum of those three amounts, \$178,500.00, might potentially have been the County's liability, plus the fees and costs for a week of trial, if the owner could have obtained a jury verdict of \$90,500.00 or more, which was the amount of owner's more recent reverse offer of judgment.

Conversely, if the jury would return a verdict of \$90,000.00 or less, the County's liability for owner's attorney's fees would be less than \$6,200.00 by operation of the eminent domain statute. Faced with that wide disparity of possible outcomes, the parties compromised at a total settlement amount for all issues at \$128,000.00, inclusive of attorney's fees and costs. That potential saving for Seminole County of more than \$50,500.00 (reducing upside potential liability from more than \$178,500.00 to \$128,000.00) is a favorable resolution under the circumstances.

VII RECOMMENDATION

Staff recommends that the BCC approve the proposed settlement of \$128,000.00, inclusive of attorney's fees and costs, for Parcel No. 152.

HZ/sb

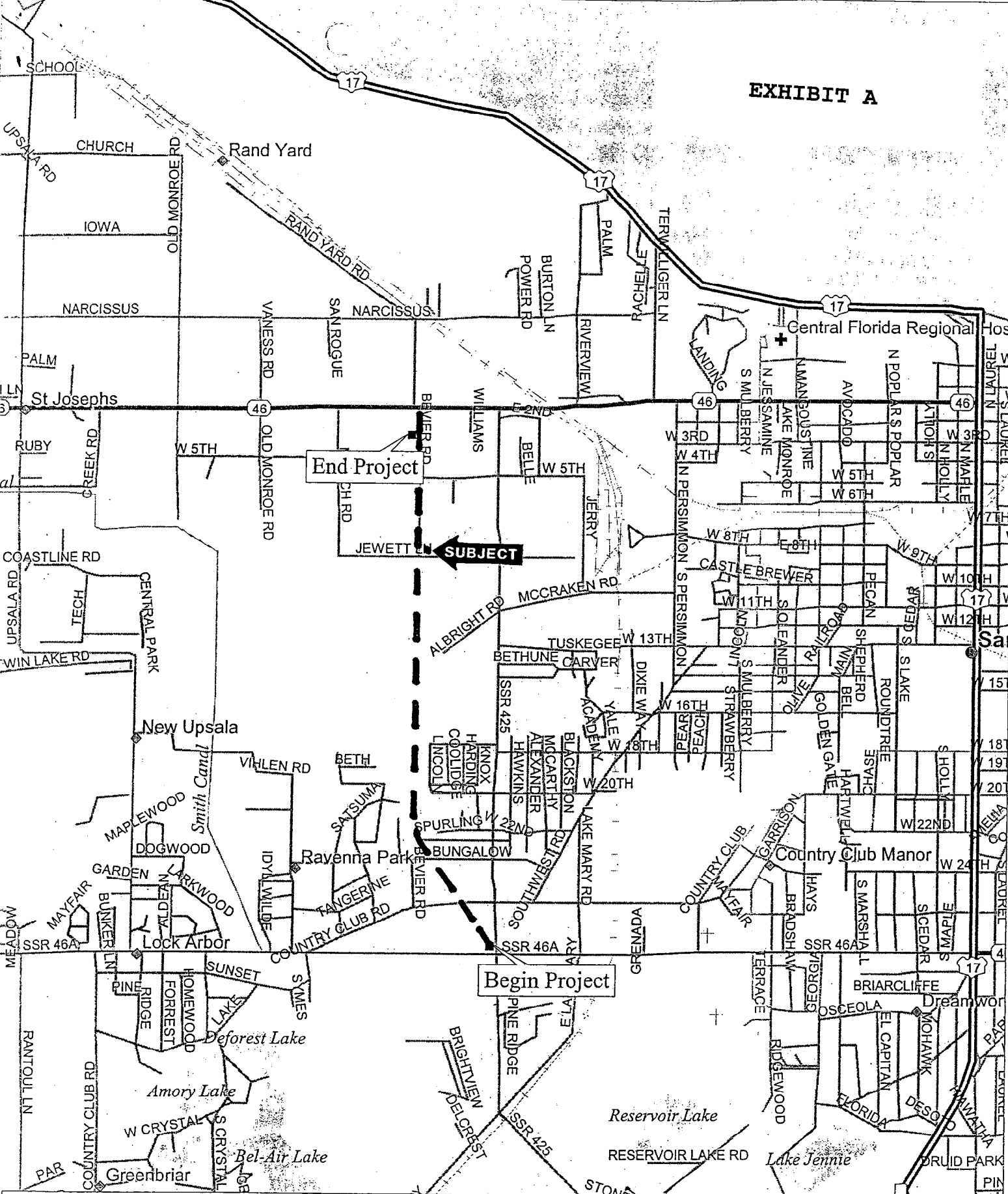
Attachments:

Exhibit A – Location Map

Exhibit B - Sketch

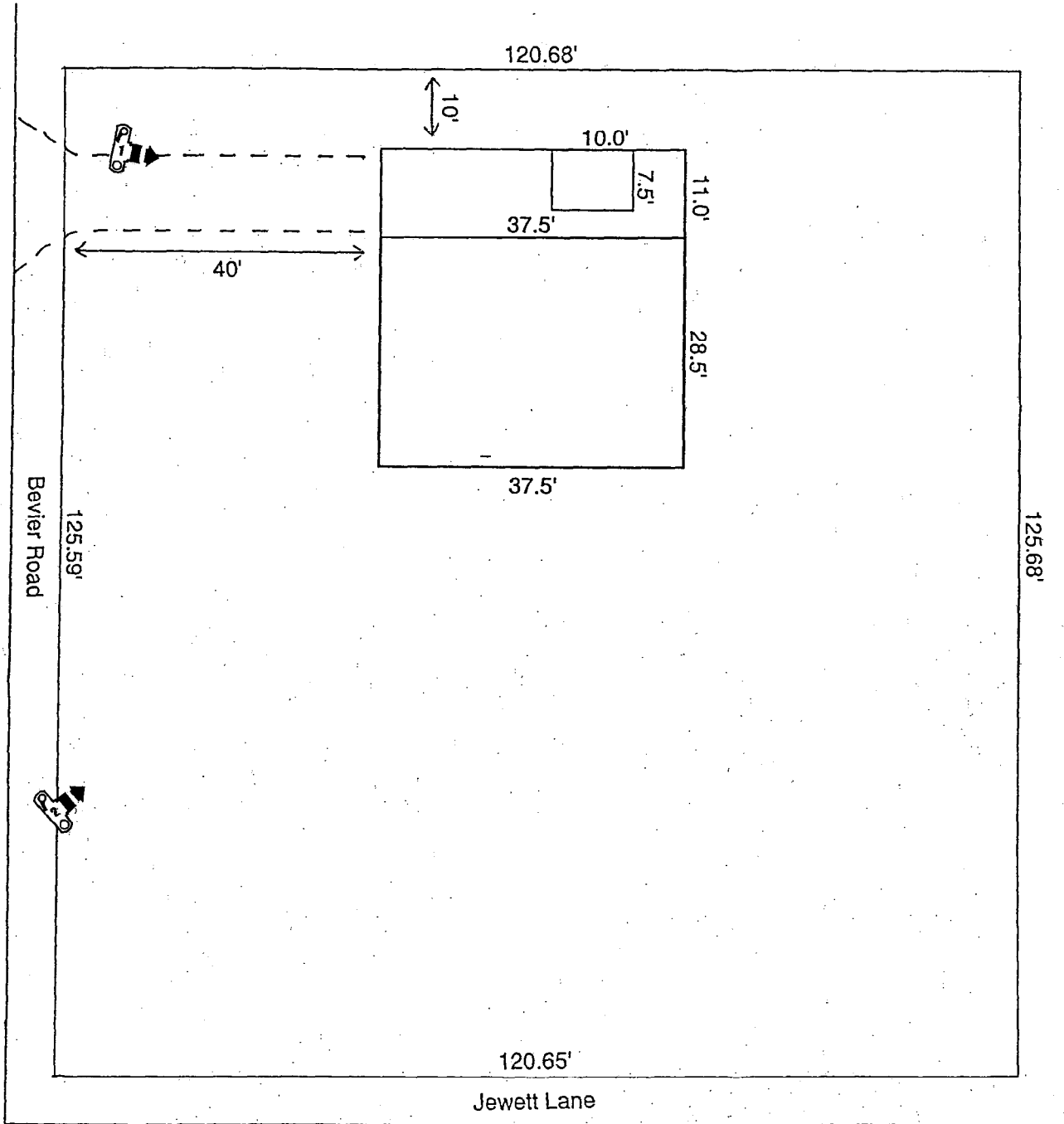
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EXHIBIT A



LOCATION MAP

EXHIBIT B




 Sketch Not To Scale

Parent Tract:	15,876 sf	0.364 ac
Part Taken:	<u>15,876 sf</u>	<u>0.364 ac</u>
Remainder:	0 sf	0 ac

PARCEL SKETCH