



**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 *HMB*
Ext. 5736

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

DATE: April 7, 2003

SUBJECT: Settlement Authorization
East Lake Mary Boulevard, Segment I Project
Parcel No. 101
Seminole County v. Loxcreen, Inc., et al
Case No.: 00-CA-1613-13-G
Owners: Loxcreen Company, Inc.

This memorandum requests settlement authorization by the Board of County Commissioners (BCC) for Parcel No. 101 on the East Lake Mary Boulevard, Segment I Project. The recommended settlement is at the total sum of \$24,400.00 inclusive of all land value, severance damage, statutory interest, attorney's fees, and costs excepting one engineering expert cost. Attorney fees are statutorily set at \$2,215.13.

I PROPERTY

A. Location Data

Parcel No. 101 is a fee simple acquisition of 1,817 square feet. The strip take is at a depth of five (5) feet along the entire frontage of the property.

B. Street Address

The street address is 1600 East Lake Mary Boulevard. A parcel sketch is attached as Exhibit A.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 96-R-187 on September 10, 1996, authorizing the acquisition of Parcel No. 101, and finding that the East Lake Mary Boulevard Project was necessary and served a public purpose and was in the best interest of the citizens of Seminole County.

III ACQUISITION AND REMAINDER

The fee simple acquisition consists of 1,817 square feet acquired from the total parcel of 145,437 square feet leaving a remainder of 143,620 square feet. The building and parking areas are not impacted by the acquisition. However, the owners claimed severance damages to the parking areas and septic system. The septic and its drain field are at the frontage of the property and immediately adjacent to the property line.

IV APPRAISED VALUES

The County's appraisal report was prepared by Clayton, Roper, and Marshall and reported full compensation to be \$15,350.00 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 NEGOTIATIONS

At mediation the Owner's asserted claim was \$43,800.00 based on land value, improvements, and severance damages for alleged damage to the septic system and proximity damage to parking spaces. The County's position was \$15,350.00.

The recommended settlement at \$24,400.00 is inclusive of all cost reimbursements including appraisal fees and court reporter costs but excepting only the one engineering expert. The recommended settlement is \$9,050.00 above the County's appraised value and \$19,400.00 less than the owner's claim. This is a cost avoidance settlement that sets attorney fees and includes all cost reimbursements except the one engineer reimbursement.

VI ATTORNEYS FEE REIMBURSEMENT

The recommended settlement at \$24,400.00 sets statutory benefit obtained attorney fees at \$2,215.13. Additionally, the settlement caps all circuit court attorney fees with no additional fees for supplemental proceedings related to the one engineer's fee.

VII COSTS REIMBURSEMENT

Statutory cost reimbursements are included in the settlement sum, excepting the one engineering expert. The owner's have one engineering expert claiming a reimbursement totaling \$37,600.00. This huge claim was bifurcated to be addressed separately at hearing before the court. No attorney fees reimbursements will result from the hearing. The one reimbursement claim could not be addressed in the settlement due to its size in relation to other matters. The issue at the cost hearing will be speculative engineering plans very similar to the recent *Chandrinos* case where the County prevailed on appeal and significantly cut the speculative engineering claims.

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 potential jury verdict in excess of the settlement sum of \$24,400.00;
- B. All statutory interest;
- C. Attorney's fees in excess of the statutory fixed sum of \$2,215.13;
- D. Attorney fees for supplemental proceedings; and
- E. Costs to proceed further.

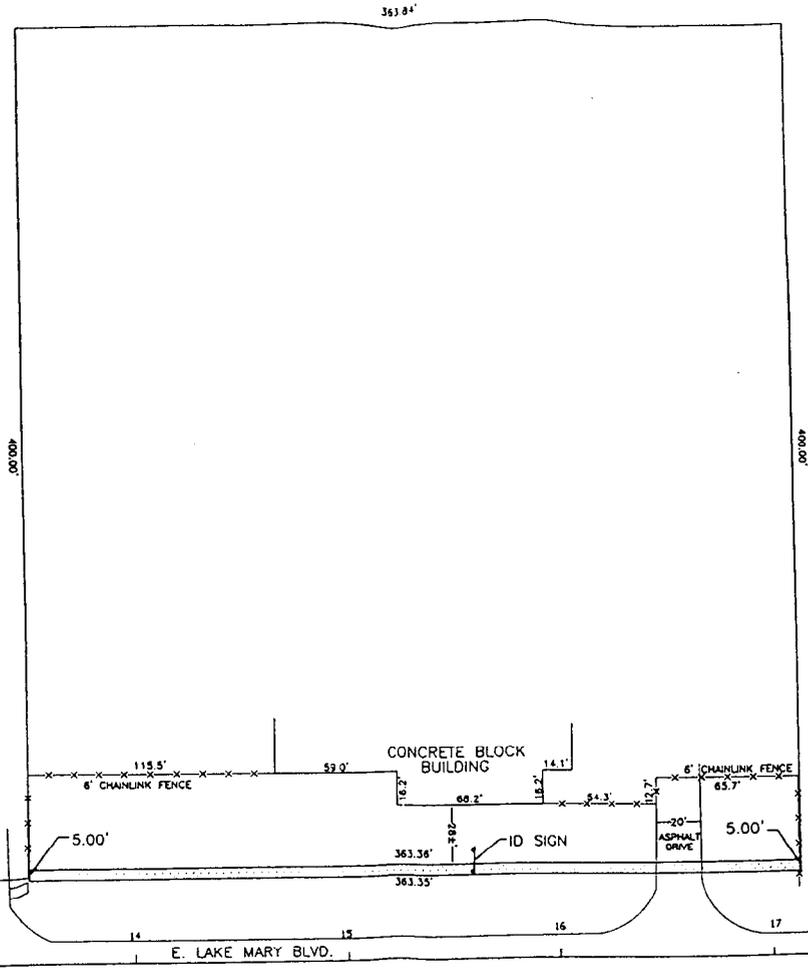
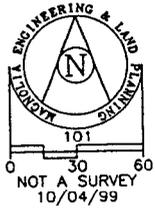
IX ANALYSIS

The settlement at \$24,400.00 includes all cost reimbursements excepting the one engineering cost claim. The settlement sum plus capped attorney fees is less than the reverse offer of judgment amount. The settlement sum is \$9,050.00 above the County's appraised value. A full appraisal cost by the owners is avoided by this settlement; the cost of an appraisal alone would approximate the sum above the appraised value. The bifurcation of the one engineer's reimbursement allowed all other aspects of the case to be resolved and attorney fees to be capped. The County should be in a good position on the engineering fee hearing as a result of *Chandrinos*.

X RECOMMENDATION

County staff recommends that the BCC approve this settlement in the amount of \$24,400.00 with attorney fees fixed at \$2,215.13. The engineering reimbursement remains for hearing.

HMB/sb
Attachment:
Sketch



FEE TAKING (101)

AREA OF WHOLE: 145,437 SF
 AREA OF TAKING: 1,817 SF
 AREA OF REMAINDER: 143,620 SF

MAGNOLIA
 Engineering & Land Planning, Inc.
 246 N. WESTMONTE DRIVE - ALTAMONTE SPRINGS, FL 32714
 PHONE: (407) 772-1329 FAX: (407) 772-1340

PARCEL 101
 SITE SKETCH
 SEMINOLE COUNTY
 FLORIDA

EXHIBIT A

SHEET
 1