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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

DATE: March 31, 2004

SUBJECT: Litigation Settlement Authorization  
Airport Boulevard Phase III, Parcel Nos. 201A and 201B  
*Seminole County v. Cubberly, et al.*  
Case No.: 03-CA-158-13-W  
Owners: Showtime Investments, Inc. ("Showtime") and Sanford Auto  
Dealers Exchange, Inc. ("Sanford Auto")

This memorandum seeks Board of County Commissioners (BCC) approval of a settlement for Parcel Nos. 201A and 201B in the Airport Boulevard Phase III road improvement project (the "Project"). The settlement fixes full compensation to Showtime and Sanford Auto, including fees and costs, at \$78,600.00, conveys part of an abandoned CSX railroad right of way (the "CSX ROW") to Showtime and approves a change in the roadway design to include a median cut.

This proposed settlement is dependent upon and related to another item on today's agenda, the agreements between and among Seminole County, the City of Sanford, Carolyn Stenstrom, James H. Dyson, Jr., and Gregory Dyson (the "City of Sanford Transaction"). In that transaction the County is conveying the CSX ROW to the City for disposition in accordance with the provisions of that agreement. After the City meets its obligations under that agreement, the remainder of the CSX ROW will belong to the City. The City of Sanford Transaction also includes a Memorandum of Understanding (MOU) between the City and the County that is necessary to implement this proposed settlement and construct the Project. Specifically, the MOU provides that the City will convey to the County that part of the remainder of the CSX ROW necessary

for construction of the Project and, in addition, prepare a deed to Showtime for another part of the remainder of the CSX ROW. The County will actually deliver the deed to Showtime as part of this settlement, if it is approved by the BCC.

## **I PROPERTY**

### **A. Location Data**

The property that was acquired in this eminent domain proceeding lies on both sides of the existing 30-foot Bevier Road right-of-way, south of its intersection with St. Johns Parkway (f/k/a Jewett Lane) in Seminole County, Florida. See attached Location Map (Exhibit A) and Sketch (Exhibit B).

### **B. Street Address**

2851 St. Johns Parkway, Sanford, FL 32771.

## **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 acquisitions consisted of: (1) Parcel No. 201A, a 0.938 acre acquisition from its parent tract, which contained 24.44 acres, and (2) Parcel No. 201B, a 0.782 acre acquisition from its parent tract, which contained 14.6 acres. The irregular acquisitions (see sketch in Exhibit B) are for the purpose of expanding the 30-foot right-of-way of Bevier Road to a sufficient width for a four-laned, realigned Airport Boulevard. There are two remainders. The larger remainder (23.5 acres) contains the buildings and the main sales area used by Sanford Auto Dealers Auction, Inc. The smaller remainder (13.818 acres) is used to park automobiles for the same business. Both remainders have frontage on the future Airport Boulevard.

## **IV APPRAISED VALUES**

The County's appraisal reports were prepared by Diversified Property Specialists, Inc. The initial valuation was \$120,100.00 for both parcels. The updated appraisal prepared for the order of taking found the value to be \$153,600.00 for both parcels as of May 1, 2003.

The property owner has not disclosed any appraisal.

## **V BINDING OFFERS AND NEGOTIATIONS**

The County's binding written offer was in the amount of \$135,000.00. In accordance with the updated appraisal the deposit in the registry of the court was \$153,600.00, which the owners have withdrawn.

Independent of the order of taking hearing, two different proposals were working their way through the County system which impacted this acquisition. First, Showtime had approached staff with a proposal to swap Parcel 201A for a part of the CSX ROW abutting their property on the south (an area approximately 42 feet by 1264 feet). Second, other staff members were working on the City of Sanford Transaction, which involves the entire CSX ROW, including the portion Showtime wanted, in order to comply with commitments made to the Florida Department of Transportation, Carolyn Stenstrom and the City of Sanford as part of the construction of the Greenway.

The culmination of all those efforts, including resolution of the Showtime condemnation case, is reflected in the agreements before the BCC on this agenda.

## **VI SETTLEMENT ANALYSIS AND COST AVOIDANCE**

If the BCC approves the City of Sanford Transaction then the County will convey the entire CSX ROW to the City, for the benefits and purposes described in that agenda item. The City has agreed to convey a part of that CSX ROW to Showtime in order to make this settlement work. Essentially, this part of the settlement involves no cost to the County. Fixing the compensation for land, fees and costs at \$78,600.00 avoids the possibility of a higher verdict and the additional costs and fees which would be incurred in further legal proceedings. Additionally, since the owners withdrew the entire good faith deposit of \$153,600.00, the County will receive a refund of \$75,000.00. Finally, modifying the construction plans to provide a median cut and a deceleration lane on the east side serving the main entrance to the Sanford Auto Dealers Exchange is the type of change commonly made in order to eliminate severance damages or induce a favorable settlement. The anticipated cost to actually construct this change is \$25,000.00.

## **VI RECOMMENDATION**

Staff recommends that the BCC approve the settlement of Parcel Nos. 201A and 201B as detailed above.

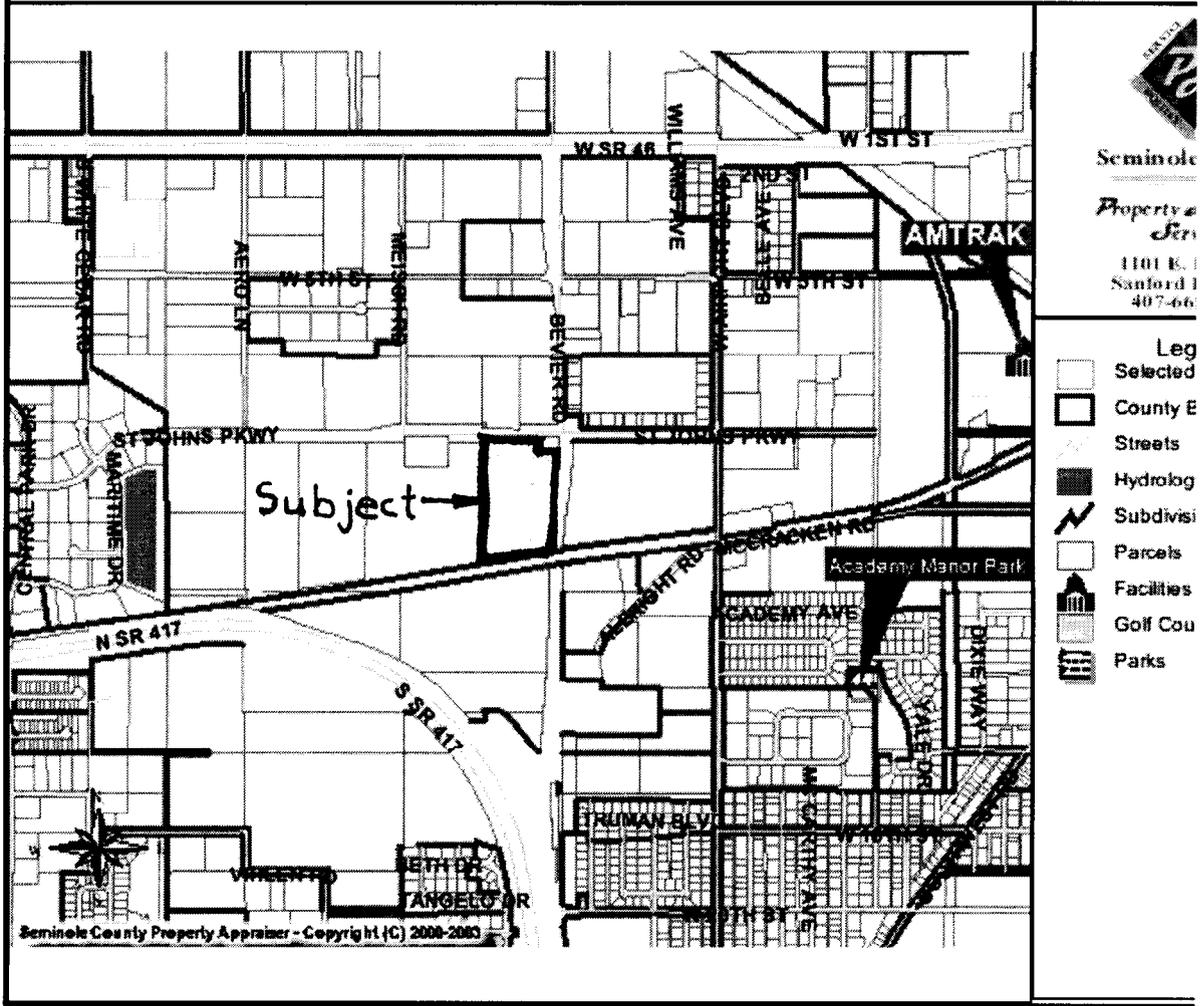
HZ/SPL/dre

Attachments:

Exhibit A - Location Map

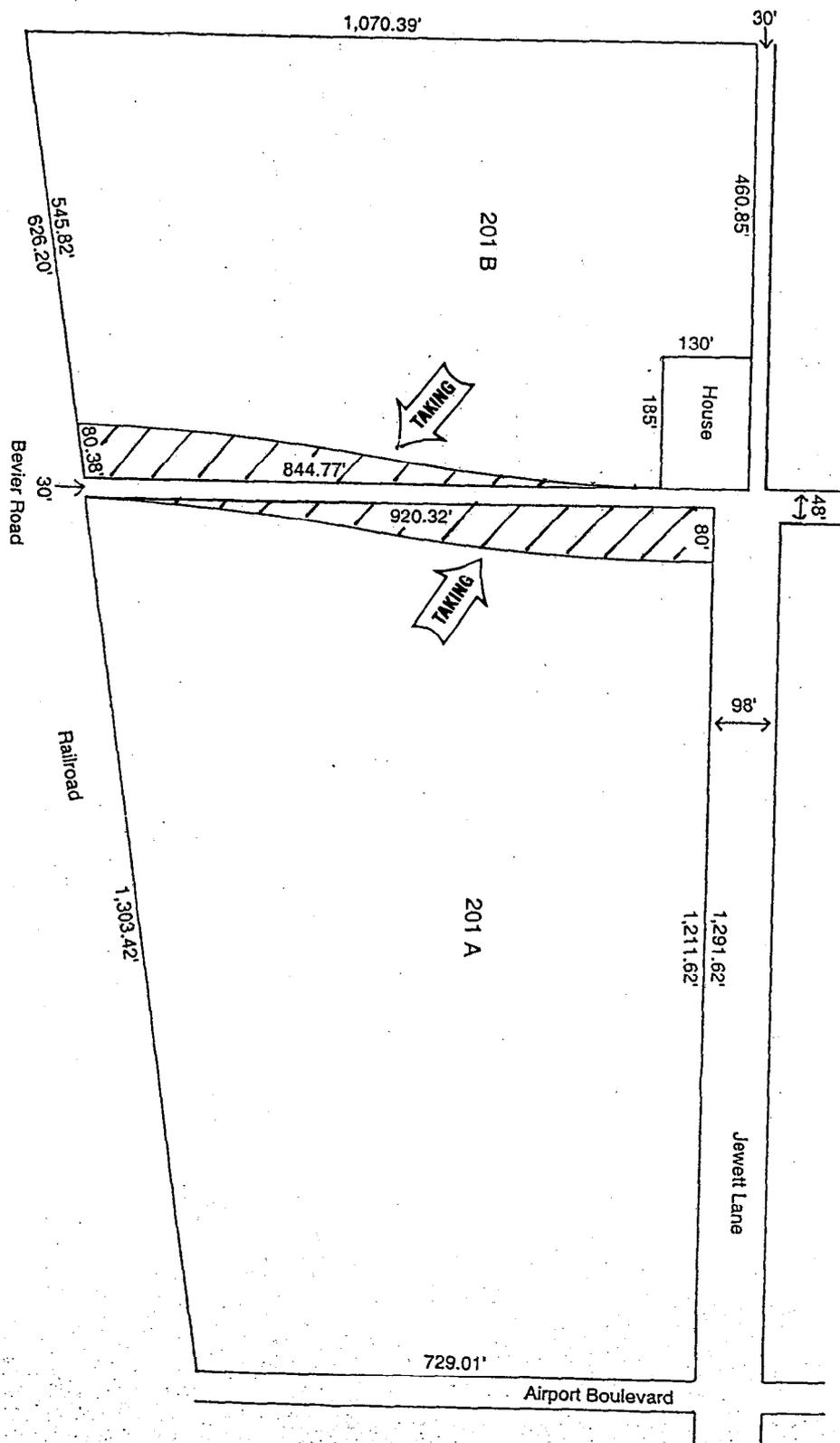
Exhibit B - Sketch





Rec	Parcel	Owner	Owner Addr	City	State
1	2619305AE43000000	SHOWTIME INV INC	PO BOX 967	SANFORD	FL

Parent tract of Parcel No. 201B  
 EXHIBIT A - Page 2 of 2



Sketch Not To Scale

# EXHIBIT B