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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 *[Signature]* HMB
Ext. 5736

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

DATE: April 18, 2005

SUBJECT: Settlement Authorization
Airport Boulevard, Phase III
Parcel No.: 109
Owner: Johnny Walker, as Trustee
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) as to Parcel No. 109 on the Airport Boulevard Phase III project. The recommended settlement is at the total sum of \$398,974.44 inclusive of all land value, severance damages, statutory interest, statutory attorney's fee and costs reimbursements. The total sum is allocated: Land Value \$357,000.00, statutory attorney's fee \$14,190.00; and cost reimbursements \$27,784.44.

I PROPERTY

A. Location Data

Parcel No. 109, is located with frontage on Airport Boulevard. A location map is attached as Exhibit A.

B. Street Address

None. The property is vacant. A parcel sketch is attached as Exhibit B.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2001-R-108 on June 26, 2001, authorizing the acquisition of Parcel No. 109. The Airport Boulevard Phase III road improvement project was found to be necessary and serving a public purpose and in the best interests of the citizens of Seminole County. The Order of Take occurred on March 4, 2003, with title vesting in Seminole County on March 12, 2003, the date of the good faith deposit.

III ACQUISITIONS AND REMAINDER

The fee acquisition from Parcel No. 109 totaled 23,130 s.f. from a parent tract of 47,611 s.f. leaving a remainder of 24,481 s.f. In the before, the property was rectangular in shape with frontage on both Country Club Road and Airport Boulevard. The intersection was traffic lighted. In the after, the remainder is one-half acre, triangular in shape, an interior lot with no corner influence with one right-in, right-out drive entrance.

IV APPRAISED VALUES

A. County Reports

Parcel No. 109

Diversified Property Specialists, Inc. performed an appraisal showing the value as of September 20, 2001, at \$285,300.00. An update opining value as of February 1, 2003, reported full compensation to be \$304,200.00.

A second look appraisal was obtained because specific circumstances existed that made obtaining a second appraisal prudent. This appraisal was performed by the Appraisal Group of Central Florida, Inc. The report date is September 21, 2004, opining full value as of March 12, 2003, (the date title vested in Seminole County) to be \$258,500.00.

B. Owner's Reports

Parcel No. 109

Calhoun, Dreggors and Associates performed the owner's report as of March 12, 2003 to opine full compensation totaling \$425,800.00

V BINDING OFFER/NEGOTIATION

The written offer was \$314,000.00. At mediation, the owner's position was \$442,982.08 inclusive of statutory interest and exclusive of attorney fees and costs.

The County's position was the appraised values of \$304,200.00 and \$258,500.00. These sums were exclusive of interest, attorney's fees and cost reimbursements.

The total settlement amount is \$398,974.44. Land, severance damage, and statutory interest were mediated at \$357,000.00 contingent upon a negotiated settlement of costs within thirty (30) days. Statutory attorney fees total \$14,190.00. The negotiated costs total \$27,784.44.

VI ATTORNEY'S FEES AND COSTS

A. Attorney fee - The statutory attorney's fee reimbursement totals \$14,190.00. The sum is statutorily computed based on a settlement sum of \$357,000.00 less a written offer of \$314,000.00 to produce a benefit of \$43,000.00 at 33%.

B. Cost reimbursements - The owner claimed costs totaling \$30,546.78 allocated:

(1)	Appraisal	\$17,107.00
(2)	Planners	\$ 9,596.95
(3)	Engineering	\$ 3,360.63
(4)	Court Reporters	\$ 113.98
(5)	Exhibit preparation	\$ 187.03
(6)	Office overhead	<u>\$ 181.19</u>

Total claimed costs \$30,546.78

In negotiation, several non-reimbursable office overhead costs were taken out and expert claims reduced. Negotiations resulted in a reduction of 9% from \$30,546.78 to \$27,784.44. The negotiated cost settlement is allocated as follows:

(1)	Appraisal	\$15,400.00
(2)	Planners	\$ 8,872.50
(3)	Engineering	\$ 3,210.93
(4)	Court Reporters	\$ 113.98
(5)	Exhibit preparation	\$ 187.03
(6)	Office overhead	<u>\$ 0.00</u>

Total reimbursed costs \$27,784.44

VII COST AVOIDANCE

By this settlement, the County avoids all additional costs associated with litigation.

VIII RATIONALE

Parcel No. 109 presented what is known in eminent domain as a high impact taking. Over half the property was taken, a commercial one-acre rectangular parcel became an inefficient commercial triangle. The corner influence and traffic light was removed changing the remaining ½-acre triangulated parcel into an interior lot with one right-in, right-out drive with a County retention pond to the rear. The high impact is shown on Exhibits A and B (see hatched area on Exhibit B) and would have had a shocking impact when presented at a jury trial.

The County's trial position would have used the second appraisal report at \$258,500.00 with the owner's position at \$425,800.00. However, the owner, if desired, would have been able to introduce the other report at \$304,200.00. A jury tends to split between valuation numbers except when either side presents a compelling case not to split. Here, the high impact taking would have influenced a jury to render a verdict above the split in values, which was \$365,000.00 based on the initial appraisal report.

The settlement sum at \$357,000.00 is less than the split. Here, a settlement at 43.4% of the spread on a high impact parcel is good.

The written offer approved by the BCC at \$314,000.00 was instrumental in achieving the positive mediated settlement. Cases tend to settle more favorably with costs more controlled when the attorney's fee is at risk. The pre-litigation offer at \$314,000.00 was sound and resulted in a statutory attorney's fee award of \$14,190.00 for the attorney's work effort over the past three (3) years.

IX RECOMMENDATION

County staff recommends that the BCC approve this settlement in the total amount of \$398,974.44 inclusive of land value, severance damage, improvements, statutory attorney's fee and costs.

HMB/dre

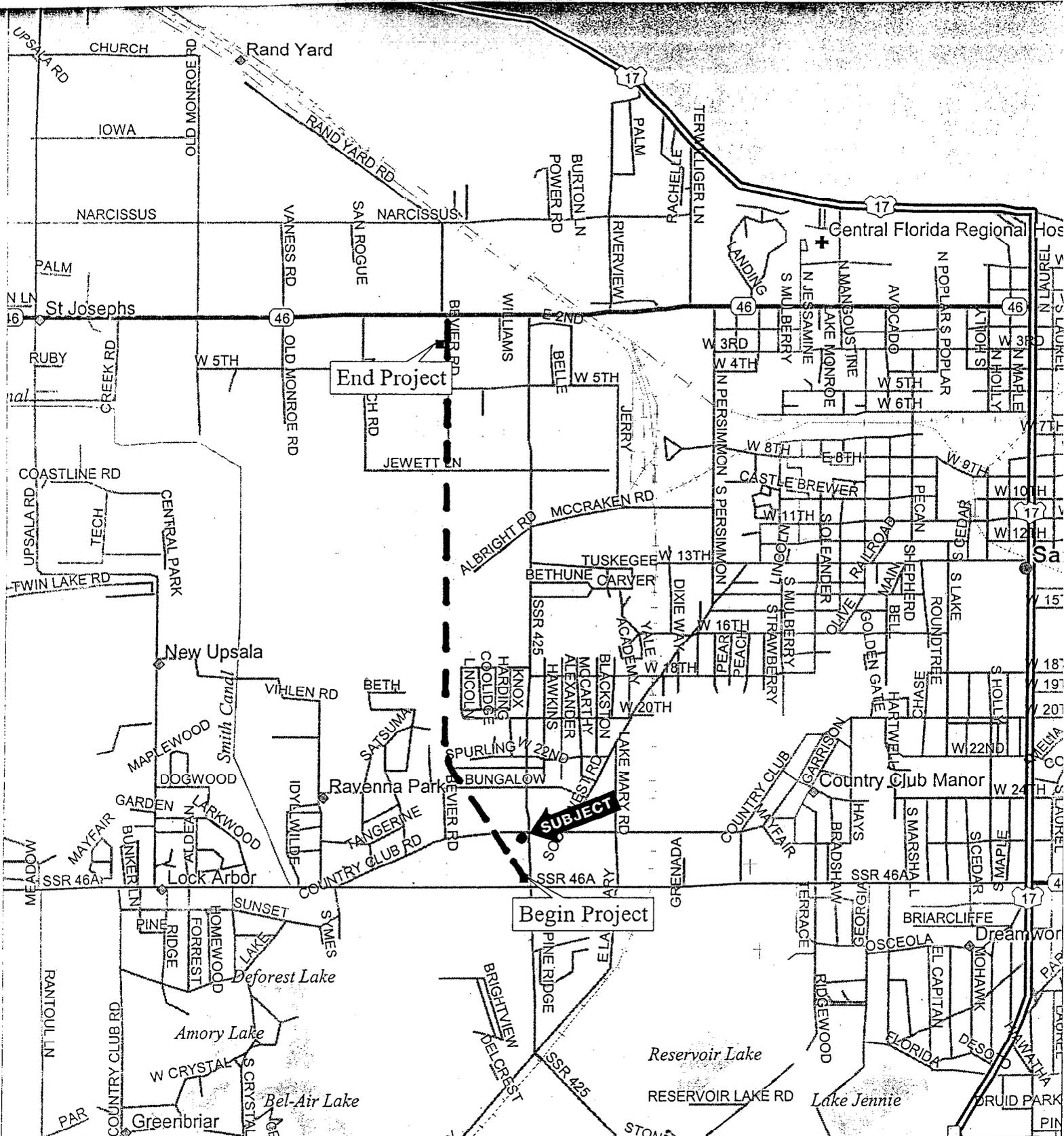
Attachments

Exhibit A - Location Map

Exhibit B - Parcel Sketch

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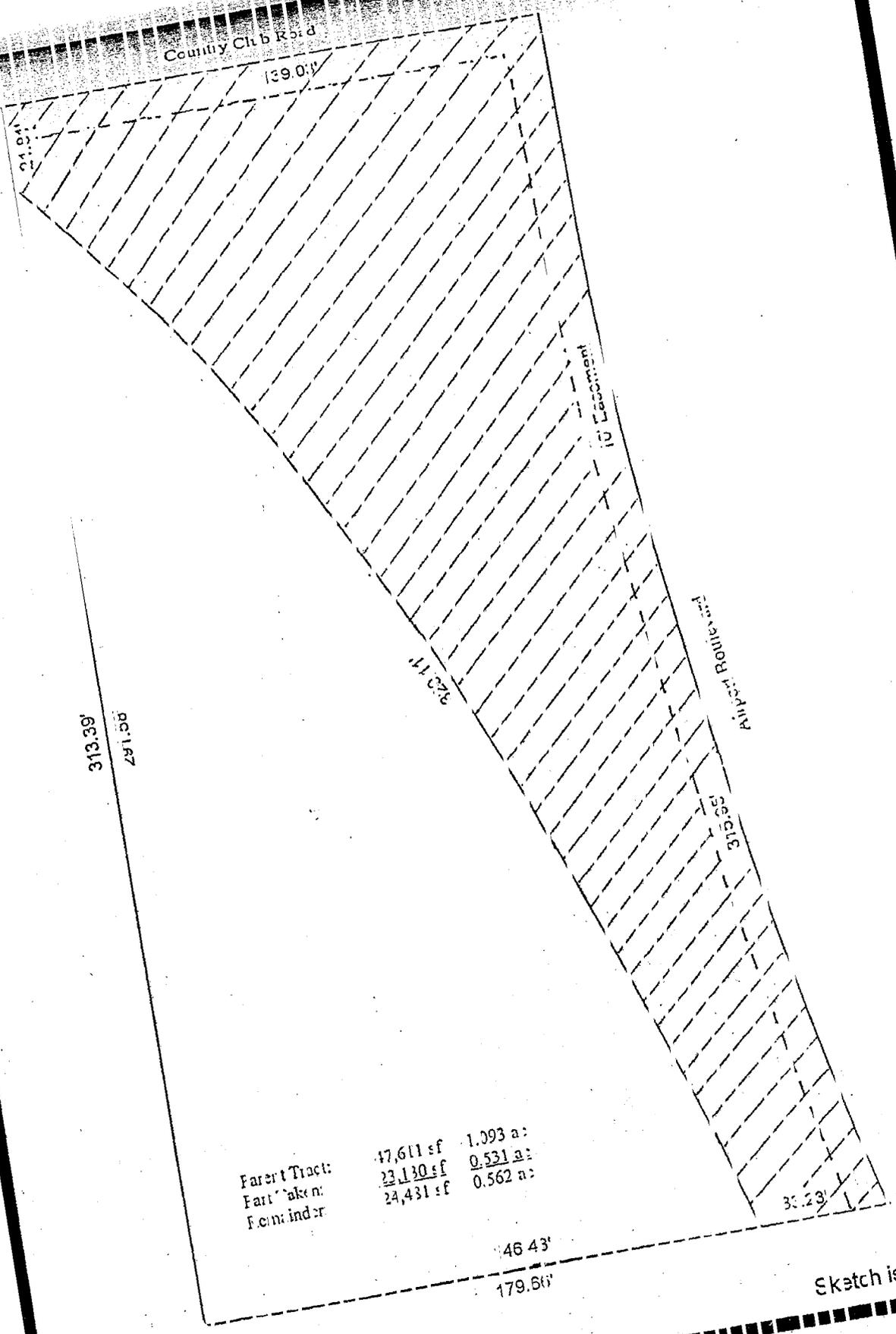
EXHIBIT A



LOCATION MAP

EXHIBIT B

County Club Road



21.01'

139.01'

10' easement

Airport Boulevard

31.23'

313.39'

291.56'

323.77'

Parent Tract:
 Part taken:
 Remainder

47,611 sf 1.093 a:
 23,130 sf 0.521 a:
 24,481 sf 0.562 a:

146.43'

179.66'

31.23'

Sketch is not to Scale

PARENT TRACT WITH TAKING