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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]* **HAMB**

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

DATE: April 15, 2005

SUBJECT: Settlement Authorization  
 East Lake Mary Boulevard Phase IIB road improvement project  
 Parcel Nos. 212/812A/B/C; S.A.Z. Development, Inc.  
*Seminole County v. Fernandez, et al.*  
 Case No. 03-CA-2040-13-W

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This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) as to Parcel Nos. 212/812A/B/C on the East Lake Mary Boulevard Phase IIB (ELMB IIB) project. The recommended settlement is at the total sum of \$241,678.00 inclusive of all land value, severance damages, statutory interest, statutory attorney's fees and cost reimbursements. The total sum is allocated: (1) Land value - \$175,000.00; (2) Statutory attorney's fees - \$18,678.00; and, (3) Cost reimbursements - \$48,000.00.

**I PROPERTY**

**A. Location Data:** Parcel Nos. 112/812A/B/C are located with a frontage on Sipes Avenue. The parent tract consists of 19.0503 acres. A location map is attached as Exhibit A.

**B. Street Address:** None. The property is vacant. See parcel sketch attached as Exhibit B.

## **II AUTHORITY TO ACQUIRE**

The BCC adopted Resolution No. 2003-R-47 on February 11, 2003, authorizing the acquisition of Parcel Nos. 212/812A/B/C. The ELMB IIB 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 October 20, 2003, with title vesting in Seminole County on October 31, 2003, the date of the good faith deposit in the amount of \$120,600.00.

## **III ACQUISITIONS AND REMAINDER**

The acquisition totals 3.3638 acres in fee simple from the parent tract of 19.0503 acres leaving split remainders of 10.457 acres and 5.23 acres. The 5.23-acre remainder was severed by the permanent drainage easement Parcel No. 812C. The easements, which total 51,163.22 square feet, encumber the split remainders.

## **IV APPRAISED VALUES**

**A. County Reports:** The County's original report opining value as of February 19, 2003, was prepared by The Spivey Group, Inc., f/k/a Hastings & Spivey, Inc., and reported full compensation to be \$107,600.00. The updated appraisal report opining value as of September 12, 2003, reported full compensation at \$120,600.00.

**B. Owner's Report:** The owner has produced an appraisal report prepared by Pinel & Carpenter, Inc., to opine full compensation at \$263,000.00 as of October 31, 2003.

## **V BINDING OFFER/NEGOTIATION**

The County's initial written offer was \$118,400.00. At mediation, the owner's position was \$263,000.00 exclusive of statutory interest, attorney fees and cost reimbursements.

The County's position at mediation was the updated appraised value of \$120,600.00 exclusive of statutory interest, statutory attorney's fee and cost reimbursements.

The total settlement amount is \$241,678.00. Land, severance damage, and statutory interest were mediated at \$175,000.00 contingent upon a negotiated settlement of costs within thirty (30) days. Statutory attorney fees total \$18,678.00. The negotiated costs total \$48,000.00.

## **VI ATTORNEY'S FEES AND COSTS**

**A. Attorney's Fee:** The statutory attorney's fee reimbursement totals \$18,678.00. The sum is statutory and computed based on a settlement sum of

\$175,000.00 less the written offer of \$118,400.00 to produce a benefit of \$56,600.00 at 33%.

**B. Cost Reimbursements:** The owner claimed costs totaling \$56,610.78 allocated:

(1)	Appraisal	\$30,422.85
(2)	Planning	\$23,020.92
(3)	Engineering	\$ 1,790.00
(4)	Miscellaneous	<u>\$ 1,377.01</u>

Total claimed costs: \$56,610.78

In negotiation, several non-reimbursable office overhead costs were taken out and expert claims reduced. Negotiations resulted in a reduction of 8.5% from \$56,610.78 to \$48,000.00. The negotiated cost settlement is allocated as follows:

(1)	Appraisal	\$25,016.25
(2)	Planning	\$21,193.75
(3)	Engineering	\$ 1,790.00
(4)	Miscellaneous	<u>\$ 00.00</u>

Total reimbursed costs: \$48,000.00

## VII COST AVOIDANCE

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

## VIII RATIONALE

Excluding interest, the County's position for trial was \$120,600.00 with the owner's position at \$263,000.00. The spread between the values was \$142,400.00. A jury tends to split between numbers except when either side presents a compelling case not to split. A split between the numbers is \$191,800.00 excluding interest. The settlement for land value is \$175,000.00 including interest. The settlement sum is less than the split. The settlement sum represents 38.2% of the spread including interest.

The highest and best use of the vacant property was speculative industrial development. The speculation is demonstrated by the County's initial appraisal at \$107,600.00 with an update six months later at \$120,600.00.

It is common for condemning authorities to make written offers at a sum greater than the initial value to cover the anticipated increase in value at the required update appraisal for the order of take hearing. In this case, the offer was made at

approximately 10% over appraised value. Here, the actual increase was affected by the speculative land value increases on ELMB IIB and around the airport.

The BCC approved a written offer of \$118,400.00, a sum that turned out to be less than the County's updated appraised value of \$120,600.00. The rapid increase in land values exposed the County to higher statutory attorney's fees.

The County's exposure at trial was \$263,000.00 plus trial costs and a higher statutory attorney's fee calculated at 1/3 of the verdict or settlement amount above the written offer amount.

The settlement at \$175,000.00 including interest is less than the split and caps statutory attorney's fees at \$18,678.00. Costs have been negotiated down 8.5%.

The total settlement at \$241,678.00 makes sense in light of the exposure at trial and potential for enhanced attorney fees.

## **IX RECOMMENDATION**

County staff recommends that the BCC approve this settlement in the total amount of \$241,678.00 inclusive of land value, severance damage, statutory interest, statutory attorney fees, and cost reimbursements.

HMB/dre

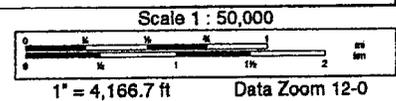
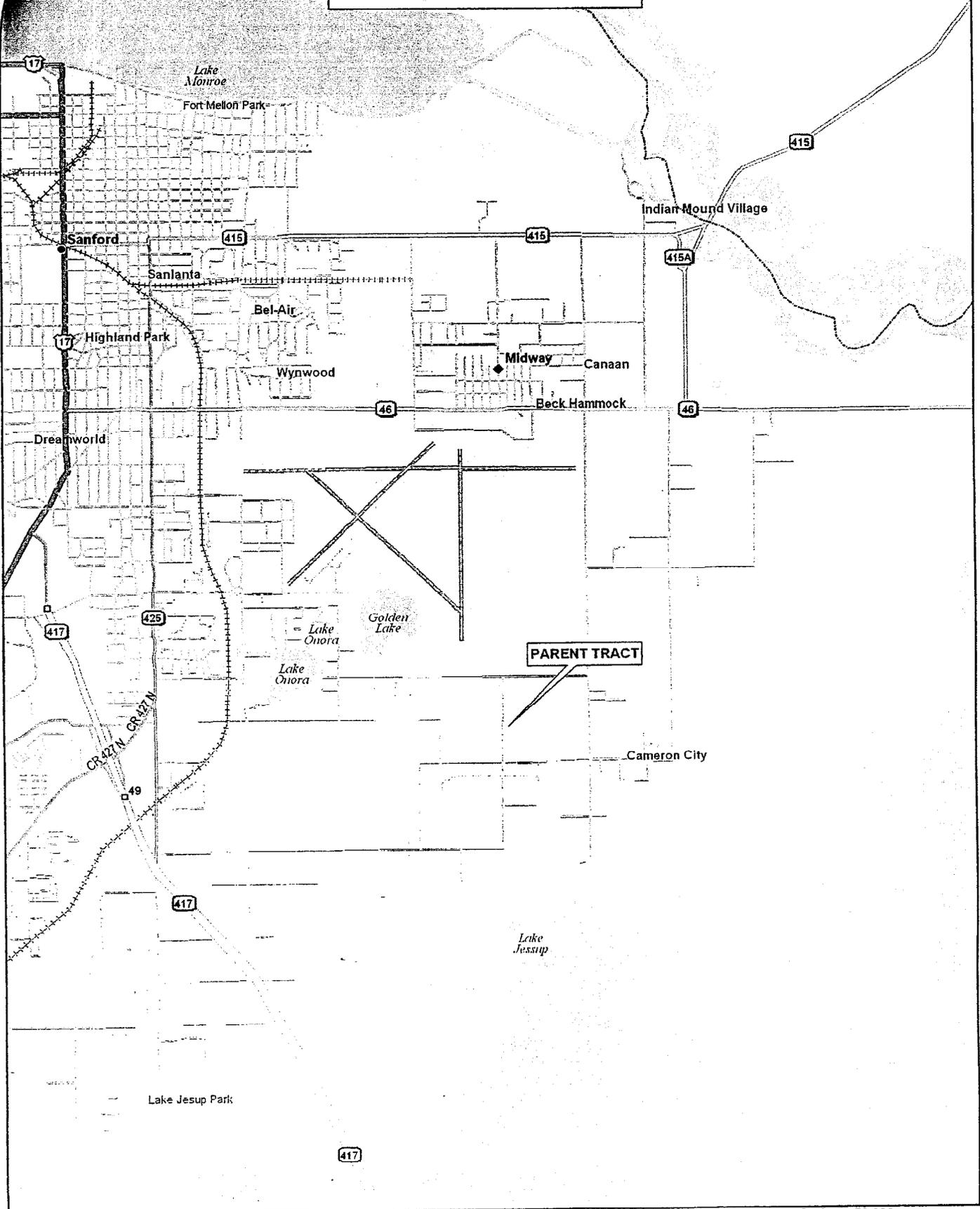
Attachments:

Exhibit A - Location Map

Exhibit B - Sketch

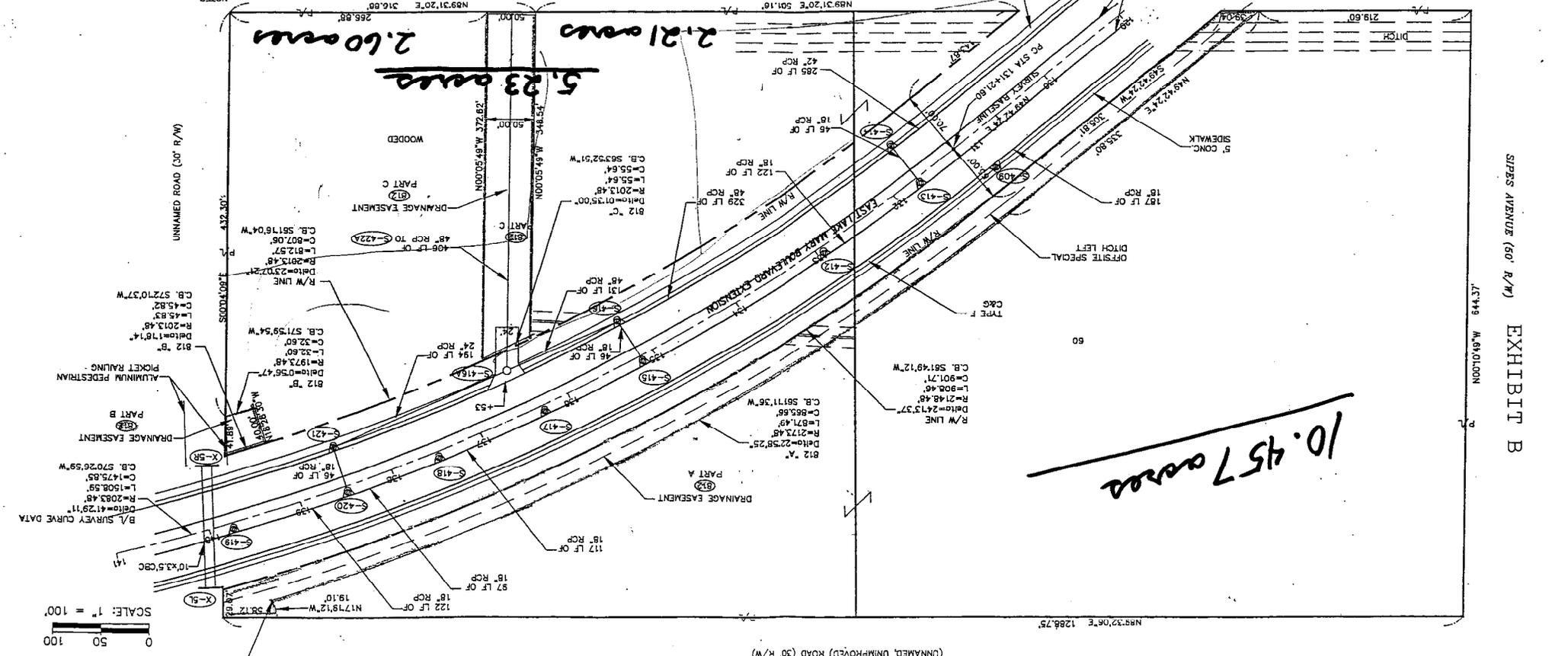
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# LOCATION MAP





NOTES:  
THIS IS A SKETCH ONLY. THIS IS NOT A BOUNDARY SURVEY.  
THE PURPOSE OF THIS SKETCH IS TO AID IN THE APPRAISAL OF THE SUBJECT PARCEL.  
ALL BOUNDARY INFORMATION AND CALCULATIONS ARE BASED ON A SPECIFIC PURPOSE MAP AND CONTROL SURVEY, EAST LAKE MARY BOULEVARD EXTENSION, FROM OHIO AVENUE TO SILVER LAKE DRIVE COUNTY PROJECT: PS-0137



EAST LAKE MARY BOULEVARD EXTENS...  
SEMINOLE COUNTY, FLORIDA  
PARCEL 212 - SKETCH OF SURVEYED PARCEL  
AREA OF PARENT TRACT = 19.0608 ACRES  
AREA OF DRAINAGE EASEMENT "A" = 0.7246 ACRES  
AREA OF DRAINAGE EASEMENT "B" = 1.8888 S/F  
AREA OF DRAINAGE EASEMENT "C" = 18.0860 S/F  
AREA OF REMAINDER RIGHT = 6.2300 ACRES  
AREA OF REMAINDER LEFT = 10.4570 ACRES

EXHIBIT B  
M.61.01.000  
LCT449  
SIPES AVENUE (60' R/W)

10.457 acres