



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *SP Lee*

FROM: Lynn Vouis, Assistant County Attorney *L Vouis*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department *P Hastings*
 Kathleen Myer, Principal Engineer/Major Projects *K Myer*

DATE: July 27, 2004

SUBJECT: Purchase Agreement Authorization
 Owners: Austin N. and Virginia Malcomb
 Parcel No. 140
 Lake Drive Road Improvement Project

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel No. 140. The parcel is required for the Lake Drive road improvement project. The purchase price is \$8,000.00, with no attorney fees or expert costs incurred by the property owners.

I THE PROPERTY

A. Location Data

The property is located at the southwest corner of Lake Drive and Sunset Road within unincorporated Seminole County, Florida.

1. Location Map (Exhibit A);
2. Sketch (Exhibit B); and
3. Purchase Agreement (Exhibit C)

B. Address

N/A – unimproved property

C. Description

The parent tract property contains 346,607± square feet, and is vacant residential land.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2002-R-70 on April 23, 2002, authorizing the acquisition of the referenced property, and finding that the construction of the Lake Drive 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/REMAINDER

The proposed acquisition of Parcel No. 140 consists of 864 square feet of land area and is irregular in shape. The proposed acquisition is located at the northeast corner of the subject, at the intersection of Lake Drive and Sunset Road, leaving the property owners with 345,743 square feet after the completion of the project.

IV APPRAISED VALUE

The County's appraised value amount, as of the date of value January 10, 2004, was \$1,000.00. The County's appraisal was prepared by Clayton, Roper & Marshall, P.A., and was approved by the County's MAI designated staff appraiser.

V BINDING OFFER/NEGOTIATIONS

On April 27, 2004, the BCC authorized a binding written offer in the amount of \$5,000.00. Thereafter, County staff negotiated this contingent settlement agreement with the property owners in the amount of \$8,000.00, with no fees or costs incurred.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

The proposed settlement makes sense, even though it is \$3,000.00 more than the County's binding written offer. The cost of an appraisal procured by the property owner would probably be more than the amount to be paid by the owner. The County has also agreed to relocate the driveway to the property in order to facilitate ingress and egress for any future development of the parent tract.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$8,000.00, with no fees, costs, or expenses incurred.

LV/kc

Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

P:\USERS\LV\VOUIS\SETTLEMENT MEMOS\LAKE DRIVE\AGENDA ITEM LAKE DRIVE 140 MALCOMB.DOC

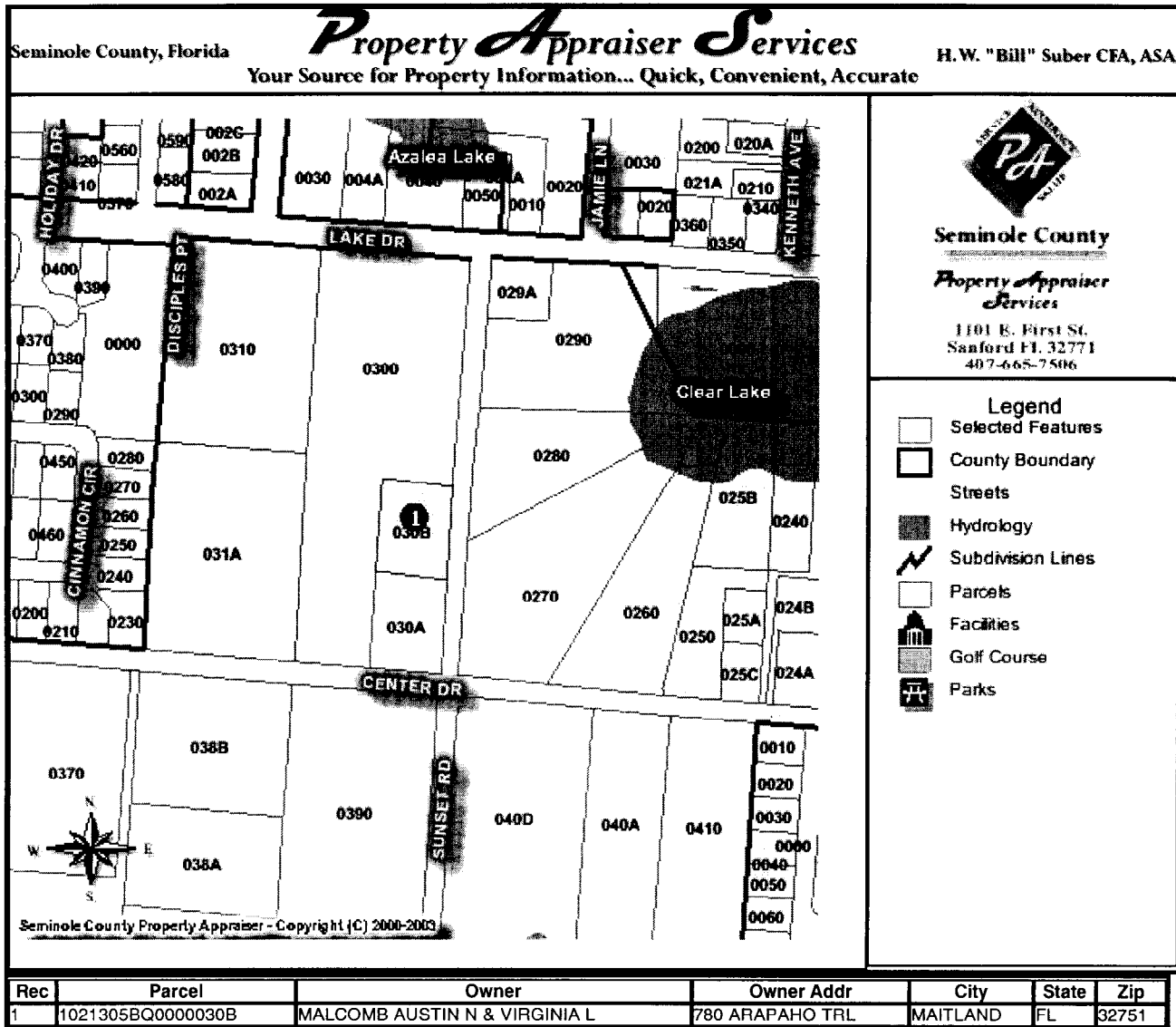


EXHIBIT A

Seminole County, Florida **Property Appraiser Services** H.W. "Bill" Suber CFA, ASA
 Your Source for Property Information... Quick, Convenient, Accurate



Seminole County
Property Appraiser Services
 1101 E. First St.
 Sanford FL 32771
 407-665-7506

Legend

- Selected Features
- County Boundary
- Streets
- Hydrology
- Subdivision Lines
- Parcels
- Facilities
- Golf Course
- Parks

Rec	Parcel	Owner	Owner Addr	City	State	Zip
1	1021305BQ00000300	MALCOMB AUSTIN N JR & VIRGINIA	780 ARAPAHO TRL	MAITLAND	FL	32751

EXHIBIT A

PROPERTY SKETCH PARENT TRACT – BEFORE TAKING

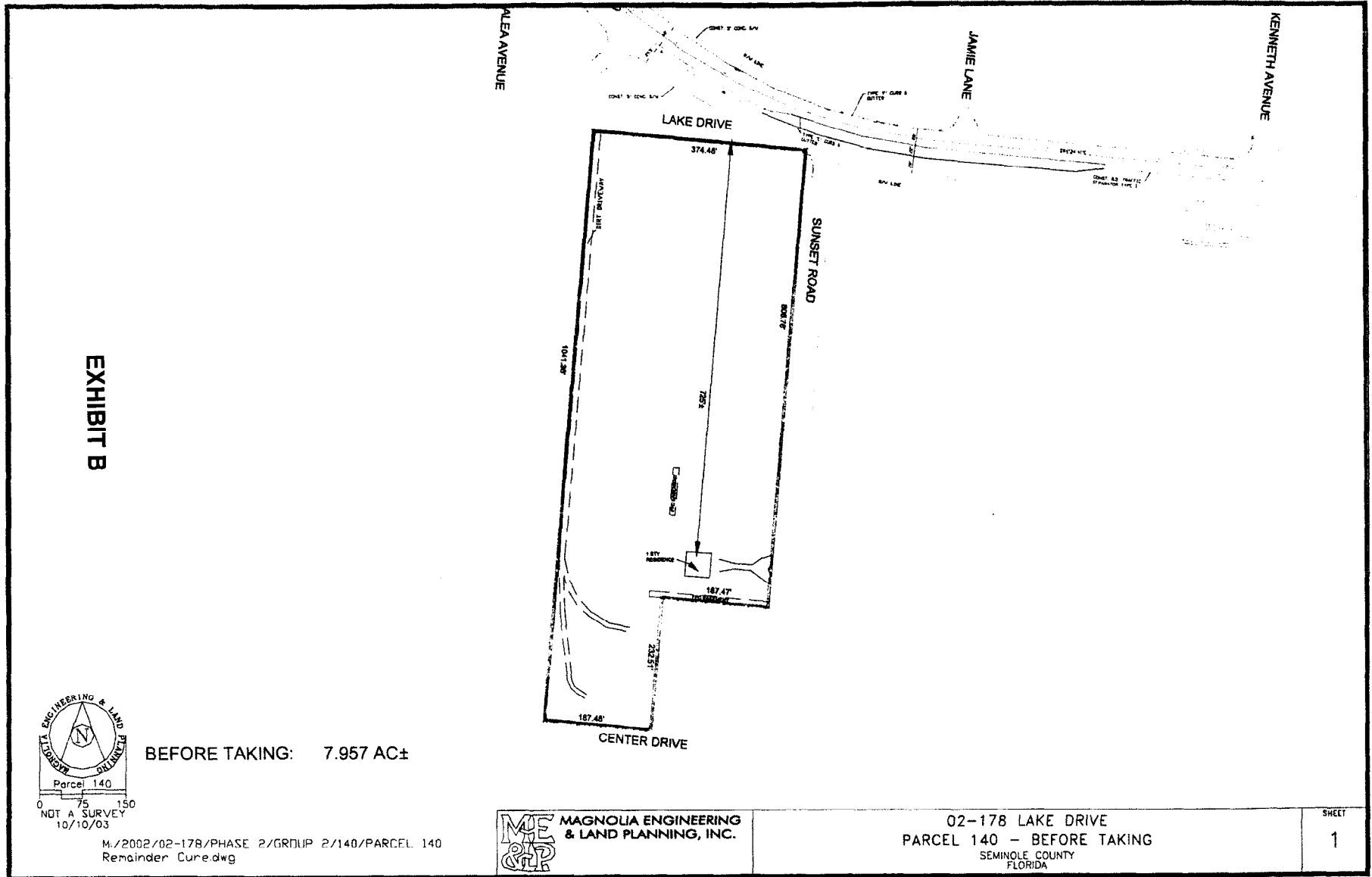
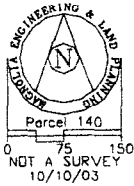


EXHIBIT B



BEFORE TAKING: 7.957 AC±

M:/2002/02-178/PHASE 2/GRUUP 2/140/PARCEL 140
Remainder Cure.dwg

M&L
MAGNOLIA ENGINEERING
& LAND PLANNING, INC.

02-178 LAKE DRIVE
PARCEL 140 – BEFORE TAKING
SEMINOLE COUNTY
FLORIDA

SHEET
1

**PURCHASE AGREEMENT
FEE SIMPLE**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this _____ day of _____, 2004, by and between Austin N. and Virginia Malcomb, whose address is 780 Arapaho Trail, Maitland, FL 32751, hereinafter referred to as "OWNER," and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY requires the hereinafter described property for a road project in Seminole County;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, OWNER hereby agrees to sell and COUNTY hereby agrees to buy the following property upon the following terms and conditions:

I. LEGAL DESCRIPTION

RIGHT-OF-WAY FEE SIMPLE

PROJECT: Lake Drive
R/W PARCEL NO.: 140

A part of Lot 30, Watts' Farms, according to the plat thereof recorded in Plat book 6, page 80 and a part of that parcel of land described in Official Record Book 1136, page 1349 as recorded in the Public Records of Seminole County, Florida being that portion of Section 10, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Commence at the Northeast corner of Lot 30, Watts' Farms Subdivision, according to the Plat thereof, as recorded in Plat Book 6, page 80, Public Records of Seminole County, Florida; thence S04°58'04"W along the East line of said Lot 30 a distance of 8.00 feet to the Right of Way line of Lake Drive as recorded in Official Record Book 186, page 490, Public Records of Seminole County, Florida, for a Point of Beginning; thence continue S04°58'04"W along said East line a distance of 21.32 feet to a point on a non-tangent curve concave Northeasterly and having a radius of 1013.93 feet; thence, from a chord bearing of N69°08'31"W, run along said curve and arc length of 80.14 feet through a central angle of 04°31'42" to a point on the aforesaid Right of Way line of Lake Drive;

thence S84°34'41"E along said Right of Way line a distance of 77.06 feet to the Point of Beginning.

Containing 864 square feet, more or less.

Parcel I. D. Number: 10-21-30-5BQ-0000-0300 and 10-21-30-5BQ-0000-030B

II. PURCHASE PRICE

(a) OWNER agrees to sell and convey the above described property of the above referenced project by Warranty Deed, free of liens and encumbrances, unto COUNTY for the sum of EIGHT THOUSAND AND NO/100 DOLLARS (\$8,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever.

(b) COUNTY shall be responsible for the following closing costs: recording fees for Warranty Deed and Title Insurance Policy issued to the COUNTY by a title insurance company of the COUNTY's choice.

(c) OWNER shall be responsible for OWNER's own attorney's fees, cost to prepare and all expenses to record instruments necessary to provide title unto COUNTY, free and clear of all liens and encumbrances, and OWNER's share of the pro-rata property taxes outstanding, up to and including the date of closing. The before mentioned closing costs and pro-rata real estate taxes shall be withheld by the COUNTY's closing agent from the proceeds of this sale and paid to the proper authority on behalf of the OWNER.

(d) OWNER covenants that there are no real estate commissions due any licensed real estate broker and further agrees to defend against and pay any valid claims made in regard to this purchase relating to covenants made herein by the OWNER.

III. CONDITIONS

(a) COUNTY shall pay to the OWNER the sum as described in Item II., above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the designated closing agent. The OWNER agrees to close within seven (7) days of notice by the COUNTY or the COUNTY's closing agent that a closing is ready to occur.

(b) COUNTY must restore access to the property which is to be impacted by the Lake Drive road project. COUNTY shall restore access to OWNER's existing parent tract, by constructing a twenty four (24') feet wide driveway connection, (centerline at approximately STATION 38+50), on the southeastern edge of the new access road connecting the existing East Lake Drive to the new Lake Drive, (Plan & Profile/East Lake Drive: Sheet Number 40; to be revised depicting this connection). This reestablished access connection shall provide continuous pavement connecting into the existing "dirt drive" access, located on the northwestern edge of OWNER's parent tract. The driveway construction shall terminate at the Right-Of-Way line on the northern edge of the existing parent tract.

(c) The access described above in III. (b), shall be the property's legal access permanently into the future, subject to the County's police power as described in Section C. The reestablished access shall be across COUNTY right-of-way which shall be utilized as drainage as part of the improved Lake Drive and as such shall remain part of the County's right-of-way into the foreseeable future. COUNTY has no present or future plans to modify the use of this property which is necessary as right-of-way for drainage for the improved Lake Drive. Unless some police power reason not contemplated at this time arises which necessitates the modification of the configuration of Lake Drive, which the COUNTY does not anticipate, this land will remain unimproved COUNTY right-of-way into perpetuity. The parent tract is legally entitled to access and since the plans necessitate the closing of the current access point, the reestablished access connection to be provided, from the centerline of approximately Station 38+50, (Plan & Profile/East Lake Drive: Sheet Number 40), to the existing "dirt drive" access on the northwestern edge of the parent tract, shall be the property's legal access permanently into the future, subject to the County's police power as herein described.

(d) OWNER agrees to vacate and surrender possession of the property upon the date of delivery of the instruments and closing of this Agreement. COUNTY may, but is not obligated to, extend possession of the property by OWNER; provided, however, that such approval will be evidenced by a written document of equal dignity herewith. During the period from the date of the execution of this Agreement by both parties and the closing, OWNER agrees to exercise diligent care in protecting the property from theft and vandalism. All windows, doors, bathroom fixtures, electrical outlets, heaters and other similar items included in the purchase price, as well as the land itself, shall be preserved in normal conditions and turned over to the COUNTY by the OWNER, intact, if applicable.

(e) Any and all encroachments existing upon the property, other than those improvements included in the purchase price, are to be removed by the OWNER at the expense of the OWNER prior to closing.

(f) OWNER warrants that there are no facts known to OWNER materially affecting the value of the properties which are not readily observable by COUNTY or which have not been disclosed to COUNTY.

(g) The instrument(s) of conveyance to be utilized at closing shall, in addition to containing all other common law covenants through the use of a warranty deed, also include the covenant of further assurances.

(h) The OWNER shall fully comply with *Section 286.23, Florida Statutes*, to the extent that said statute is applicable.

(i) In the event that COUNTY subsequently abandons this project after execution of this Agreement, but before closing, this Agreement shall be null and void.

(j) In the event that difficulties arise as to clearing title sufficient to consummate a closing of this Purchase Agreement or difficulties occur in the issuance of a title insurance commitment which is acceptable to the COUNTY; this Agreement shall survive the filing of any eminent domain action by the COUNTY and shall serve as a joint

stipulation regarding all valuation issues and fees and costs matters in any condemnation proceeding initiated by the COUNTY relating to the real property herein described. The OWNER agrees that, in accordance with any request made by the COUNTY, the OWNER shall execute any and all instruments, pleadings, documents and agreements upon litigation reflecting the full settlement as set forth herein. The OWNER agrees not to oppose the COUNTY's condemnation proceedings in any way. The OWNER, may however, assert OWNER's rights against other claimants in apportionment proceedings.

(k) As part of the consideration for this Purchase Agreement, OWNER hereby grants to COUNTY, its employees, agents, consulting engineers, contractors and other representatives the right to enter upon and to have exclusive possession of the property described in Exhibit A to this Agreement. The right of entry shall commence ninety (90) days after the execution of this Agreement by COUNTY, and shall continue until closing occurs, or if closing cannot occur, until the condemnation proceedings to acquire the property have been completed. Aside from this Agreement, no further notification of COUNTY's intent to enter the property is required. This right of entry is for the purpose of construction of the Lake Drive road improvement project and so that the COUNTY's construction schedule can be maintained notwithstanding issues which may delay closing in a timely manner. OWNER will not receive from COUNTY any additional compensation beyond that set forth in this Purchase Agreement during the period of time the COUNTY occupies the above described property for the purpose set forth above for the right to enter and possess the property before conveyance of title.


(l) The OWNER shall indemnify and save the COUNTY harmless from and against all liability, claims for damages, and suits for any injury to any person or persons, or damages to any property of any kind whatsoever arising out of or in any way connected with this Agreement or in any act or omission in any manner related to said Agreement.


(m) The COUNTY shall be solely responsible for all of COUNTY activities conducted on the property. OWNER shall not be considered an agent or employee of COUNTY for any reason whatsoever on account of the Agreement.

(n) The OWNER states that the OWNER has not engaged in any action that would create a conflict of interest in the performance of OWNER's obligations under this Agreement with the COUNTY which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names on the date first above written.

WITNESSES:



SIGNATURE


PRINT NAME





SIGNATURE



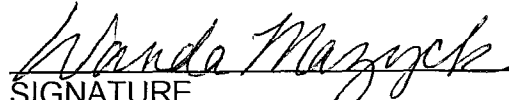
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WITNESSES:

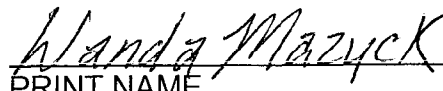


SIGNATURE


PRINT NAME

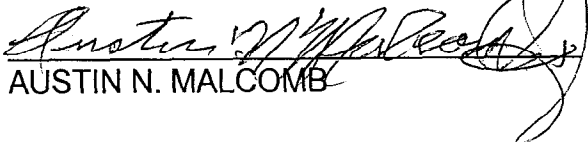


SIGNATURE



PRINT NAME

PROPERTY OWNER:



AUSTIN N. MALCOMB

ADDRESS: 780 Arapaho Trail
Maitland, FL 32751

PROPERTY OWNER: X



VIRGINIA MALCOMB

ADDRESS: 780 Arapaho Trail
Maitland, FL 32751

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
DARYL G. McLAIN, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by the Board of
of County Commissioners at its _____,
2004, regular meeting.



County Attorney

LV/sb
07/120/04