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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 *HMB*
Ext. 5736

CONCUR: *psl* Ram Hastings, Administrative Manager/Public Works Department
MA Michael Arnold, Road/Stormwater Manager

DATE: August 4, 2005

SUBJECT: Settlement Authorization
Lockhart-Smith Canal Project
Seminole County v. Townsend, et al.
Case No.: 2004-CA-2476-13-W
Owner: Martha Faircloth
Tax Parcel No. 16-19-30-5AB-0200-0050

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) as to Parcel No. 16-19-30-5AB-0200-0050 on the Lockhart Smith Canal Project. The recommended settlement is at \$10,000.00 for attorney's fees and costs related to the defeated order of take and construction plan changes estimated at \$40,000.00 in lieu of monetary compensation for the easement acquired. The total settlement cost is approximately \$50,000.00 with the County receiving a slightly larger easement for access and maintenance and Martha Faircloth receiving design changes requested by her in an effort to save the significant oak trees and natural foliage within her property and along the bank of the Lockhart Smith Canal and the County's easement.

I PROPERTY

A. Location Data

The Faircloth parcel is located at the intersection of South Oregon Street and Orange Boulevard. A property sketch depicting the location and original planned easement of 17,355 s.f. is attached as Exhibit A. A sketch showing the proposed larger easement area and design plan changes is attached as Exhibit B.

B. Street Address

The street address is 4761 Orange Boulevard, Sanford, Florida.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2003-R-98 on May 27, 2003, authorizing the acquisition of the Faircloth easement. The Lockhart-Smith Canal 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 was denied at hearing on March 15, 2005 because the Resolution contained a legal description but no description of the rights to be acquired by the easement sought. Negotiation has resulted in this proposed settlement with the new proposed easement area slightly larger but more protective of the oak trees.

III ACQUISITIONS AND REMAINDER

The proposed easement acquisition is slightly larger than the original planned easement. As shown on Exhibit B, the Driveway/Access Road easement of 20± feet protrudes deeper into the Faircloth property to avoid the demolition of five (5) oak trees. The proposed easement legal description is presently under preparation and is expected to be approximately 300± s.f., larger than the original easement of 17, 355± s.f.

The Faircloth parent tract is 4.237 acres. In the after, the property will remain 4.237 acres; however, 17,655± s.f. of the property will be encumbered by the County's easement.

IV APPRAISED VALUES/ BINDING OFFER

Diversified Property Specialists, Inc. performed an appraisal for the County to opine full compensation as of July 18, 2003 to be \$25,600.00. An update opining value as of January 15, 2005 opined full compensation to be \$30,900.00.

The owner prepared no appraisal reports.

The County's BCC approved written offer was \$31,000.00

V NEGOTIATION

At the failed order of take hearing, Mrs. Faircloth proposed settlement discussions. The discussions centered on the County receiving an easement adequate for the access and maintenance of the Lockhart Smith Canal but with minimal impact on the trees along the bank within the Faircloth property.

The design and construction plan changes are estimated to cost approximately \$40,000.00. The proposed changes are shown on the sketch attached as Exhibit B and discussed below. The actual plan changes will not be made until this settlement

agreement is approved by the BCC and Mrs. Faircloth and a final judgment is entered by the Court.

A. CONSTRUCTION PLAN CHANGES

The agreed plan changes are as follows:

- (1) The County receives a slightly larger easement that includes the bank of the canal and an access and maintenance berm area of approximately 20± feet in width. The easement area is larger because it extends deeper into the Faircloth property to avoid 5± oak trees that would have been removed under the original easement.
- (2) The drive portion of the easement of 20± feet in width will become a driveway sufficient for mutual access by the County to the canal and Faircloth for access to her parking area adjacent to her house.
- (3) Sod will be installed west of the new drive portion of the easement to restore the prior driveway to the Faircloth house.
- (4) Fencing will be installed at the northern and southern end of the easement; but not along the top of the bank.
- (5) Gates are to be installed at the north and south end of the joint use driveway.
- (6) As needed at approximately 3 locations, timber landscape boxes will be installed along the bank to protect existing oak trees growing in the canal bank.
- (7) As needed at approximately 2 locations fill and rip-rap will be installed along the bank to protect existing oak trees where the presently exposed tree roots require fill.
- (8) Approximately 4 small palm trees, 3 chinaberry trees, and native Florida underbrush will be removed from the drive portion of the easement width of 20± feet.
- (9) The County agrees to trim low hanging limbs only if necessary to assure equipment access and equipment operator safety.
- (10) The County agrees to use its best efforts not to disturb trees and foliage outside the drive portion of the easement.

(11) The County, under the agreement, does not assure the future health of the trees and accepts no liability resulting from damages to the trees from natural causes.

(12) Mrs. Faircloth agrees to remove the existing dog pens, chicken coops, and other personal property from the easement area.

B. MONETARY COMPENSATION

Under the proposed settlement, Mrs. Faircloth receives no monetary compensation. She receives only the desired construction plan changes discussed above.

VI ATTORNEY FEES AND COSTS

A. BACKGROUND

On March 15, 2005, an Order of Take was denied on the original easement across the Faircloth property because the Resolution of Necessity did not contain a description of the rights to be acquired by the easement sought.

The County is required by *Section 73.092(2), Florida Statutes* to pay attorney fees and costs for failed Order of Take hearings.

B. ATTORNEY FEES AND COSTS CLAIM

The owner claimed attorney fees totaling \$10,080.00 based on 50.4 hours at \$200.00 per hour. Engineering witness costs total \$2,500.00. The attorney fees and cost claim total \$12,580.00.

C. NEGOTIATION AND RATIONALE

The County could object because the motion for attorney's fees and costs related to the failed order of take was not filed timely. However, given the satisfactory resolution of the acquisition and agreement to reduce the claim for fees and costs to a total of \$10,000.00, staff does not recommend raising the objection and requiring a hearing.

VII RECOMMENDATION

County staff recommends that the BCC approval of the proposed settlement at \$10,000.00 for attorney's fees and costs and the construction plan changes at an approximate cost of \$40,000.00. This is an excellent result because the County will receive a larger easement, which is adequate for maintenance and access to the canal at no additional cost or expense other than the cost of changing the plans and proposed construction.

HMB/sb

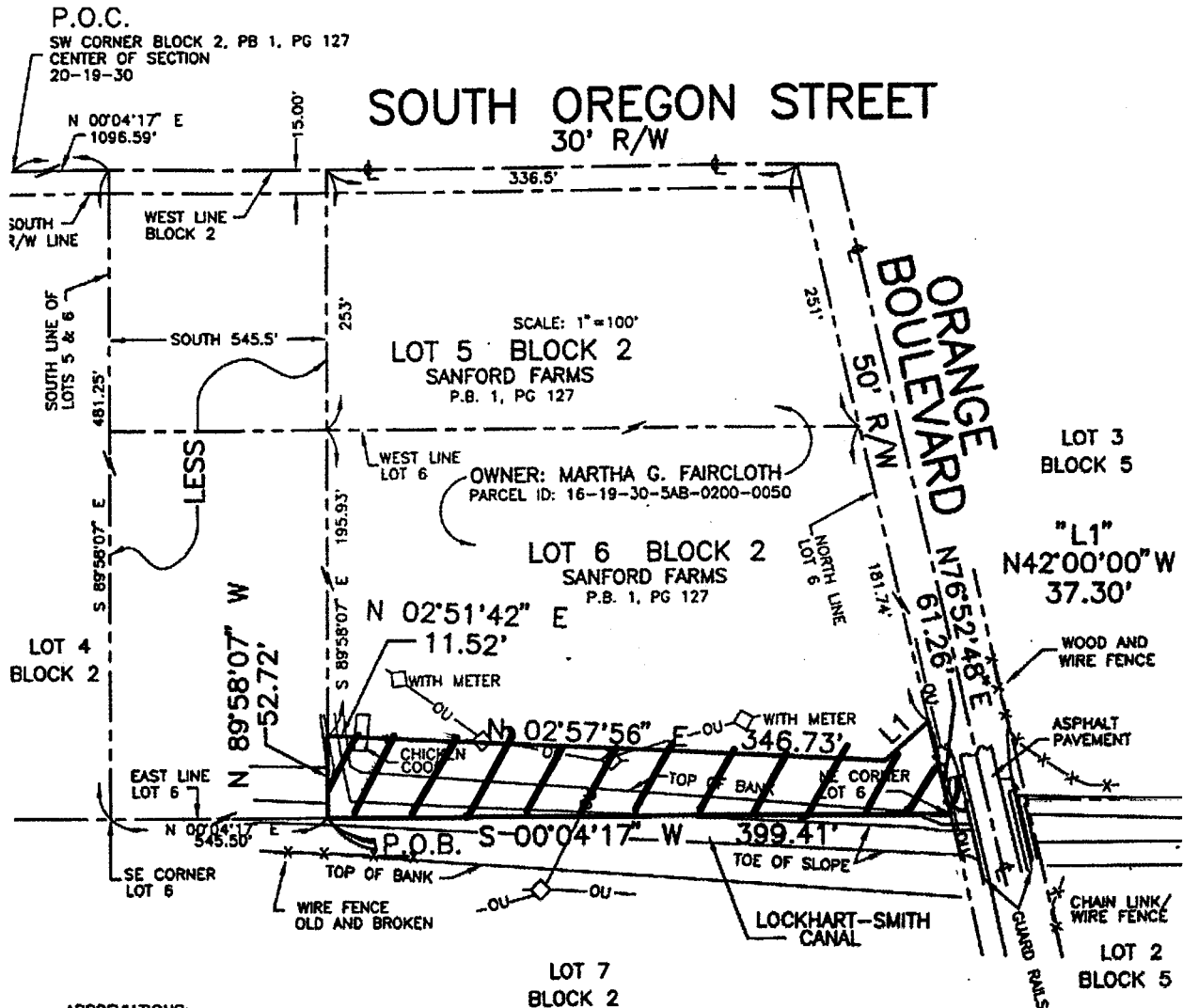
Attachments

Exhibit A

Exhibit B

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PROPERTY SKETCH



ABBREVIATIONS:

- PB = PLAT BOOK
- PG = PAGE(S)
- R/W = RIGHT-OF-WAY
- L = LENGTH OF CURVE
- R = RADIUS
- Δ = CENTRAL ANGLE
- CB = CHORD BEARING
- CH = CHORD DISTANCE
- P.O.C. = POINT OF COMMENCEMENT
- P.O.B. = POINT OF BEGINNING
- ☉ = CENTERLINE
- X- = WIRE FENCE
- ◇ = POWER POLE
- OU = OVERHEAD UTILITY LINE



Drawing No. 48126012
 Job No. 48126
 Date: 3-20-03
 SHEET 2 OF 2
 See Sheet 1 for Description

SOUTHEASTERN SURVEYING & MAPPING CORP.
 324 North Orlando Avenue
 Maitland, Florida 32751-4702
 (407)647-8888 Fax(407)647-1667
 Cert. No. 1B-2108
 email: info@southeasternsurveying.com

Gate Installation

Drive Portion of easement 20' ± Width

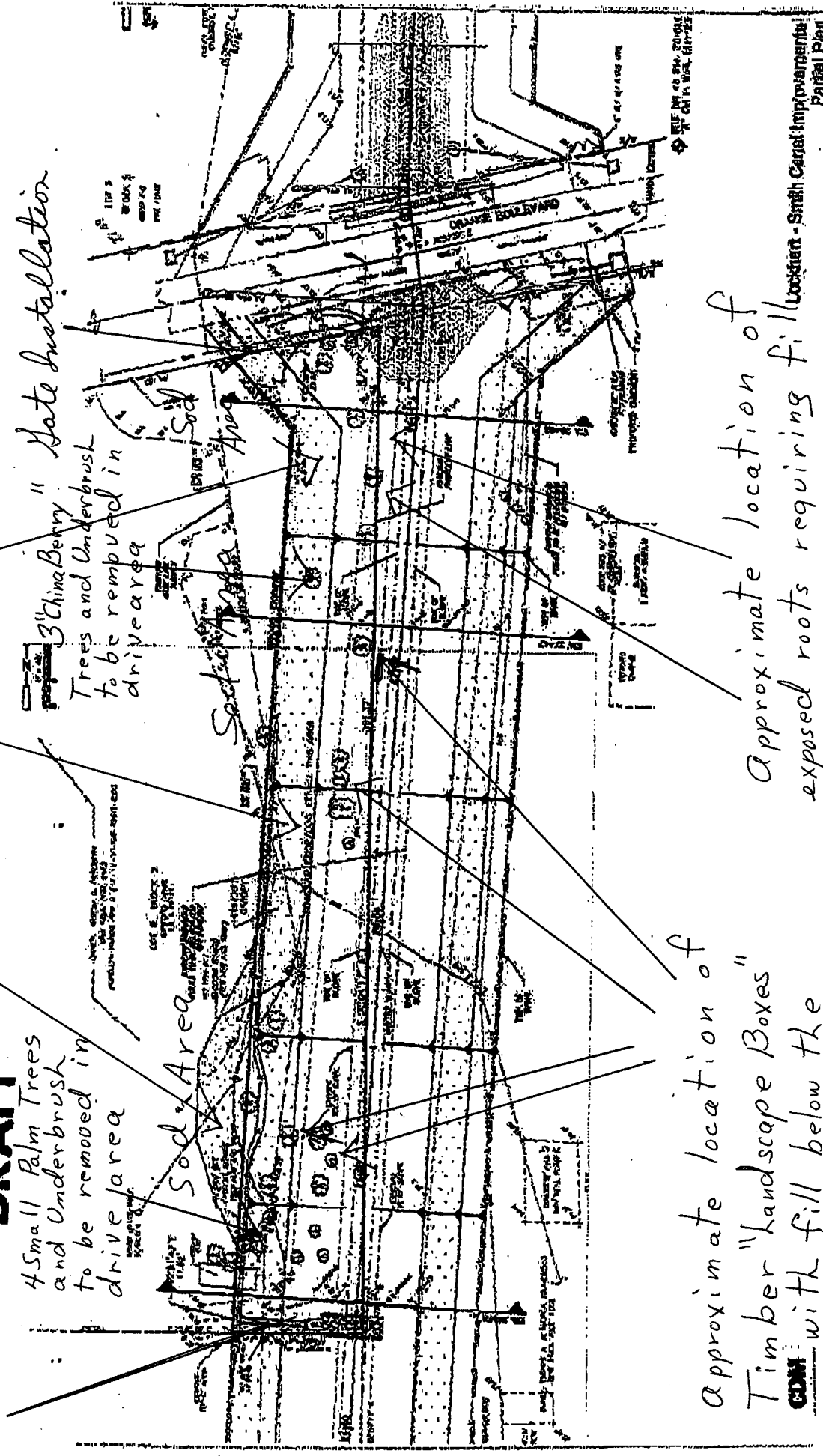
DRAFT

4 Small Palm Trees and Underbrush to be removed in drive area

3 "China Berry" Gate Installation
Trees and Underbrush to be removed in drive area

Sod Area

Sod Area



Approximate location of Timber "Landscape Boxes" with fill below the "Landscape Boxes"

Approximate location of exposed roots requiring fill and rip rap.

Location - Smith Canal Improvement Partial Plan