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**COUNTY ATTORNEY'S OFFICE  
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *[Signature]*

FROM: Lynn Vouis, Assistant County Attorney

CONCUR: Pam Hastings, Administrative Manager/Public Works Department *[Signature]*  
 Kathleen Myer, Principal Engineer/Major Projects *[Signature]*

DATE: August 3, 2004

SUBJECT: Purchase Agreement Authorization  
 Owners: Walter and Jill Stephens  
 Parcel No. 109  
 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. 109. The parcel is required for the Lake Drive road improvement project. The purchase price is \$50,000.00, with no attorney fees or expert costs incurred by the property owners.

**I THE PROPERTY**

**A. Location Data**

The property is located on the south side of Lake Drive, approximately one-half mile west of Tuskawilla 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 – vacant residential land

### **C. Description**

The parent tract property contains 174,066± 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. 109 consists of 8,371 square feet of land area. The proposed acquisition is a strip take contiguous to Lake Drive, located along the subject's northern boundary. The property owners will retain 165,695 square feet after the completion of the project.

## **IV APPRAISED VALUE**

The County's appraised value amount, as of the date of value February 27, 2004, was \$19,575.00. 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 June 8, 2004, the BCC authorized a binding written offer in the amount of \$32,000.00. Thereafter, County staff negotiated this contingent settlement agreement with the property owners in the amount of \$50,000.00, with no fees or costs incurred.

## **VI SETTLEMENT ANALYSIS/COST AVOIDANCE**

The main justification for this proposed settlement is the avoidance of future litigation costs. The owners have not yet employed experts to evaluate the County's offer to purchase their property. The owners have repeatedly refused to accept less than the \$50,000.00 for the acquisition. The difference between the binding written offer amount of \$32,000.00 and the owners' settlement offer of \$50,000.00 is \$18,000.00. If the County does not accept the owners' counter offer, the owners will employ an attorney, who in turn will employ an appraiser and in this case most likely a land planner to evaluate the impact of the acquisition on the remainder property. Typical appraisal and planner fees approved by the Courts in similar cases have approached \$10,000.00, even based on a relatively early case settlement. If the owners

decide to force the County to acquire the property through an Order of Taking hearing, the expert fees will increase. The County will also have to pay the costs of litigation-filing fees, publication, service of process, etc. Even if the County decides to proceed to a jury trial and prevails, the costs expended by the County to reach that point would far exceed the \$18,000.00 demanded by the property owners. In a case like this, where no experts have been employed, it simply makes sense to settle early and pay the additional amount to the property owners directly.

## **VII RECOMMENDATION**

County staff recommends that the BCC authorize settlement in the amount of \$50,000.00, with no fees, costs, or expenses incurred.

LV/kc

Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

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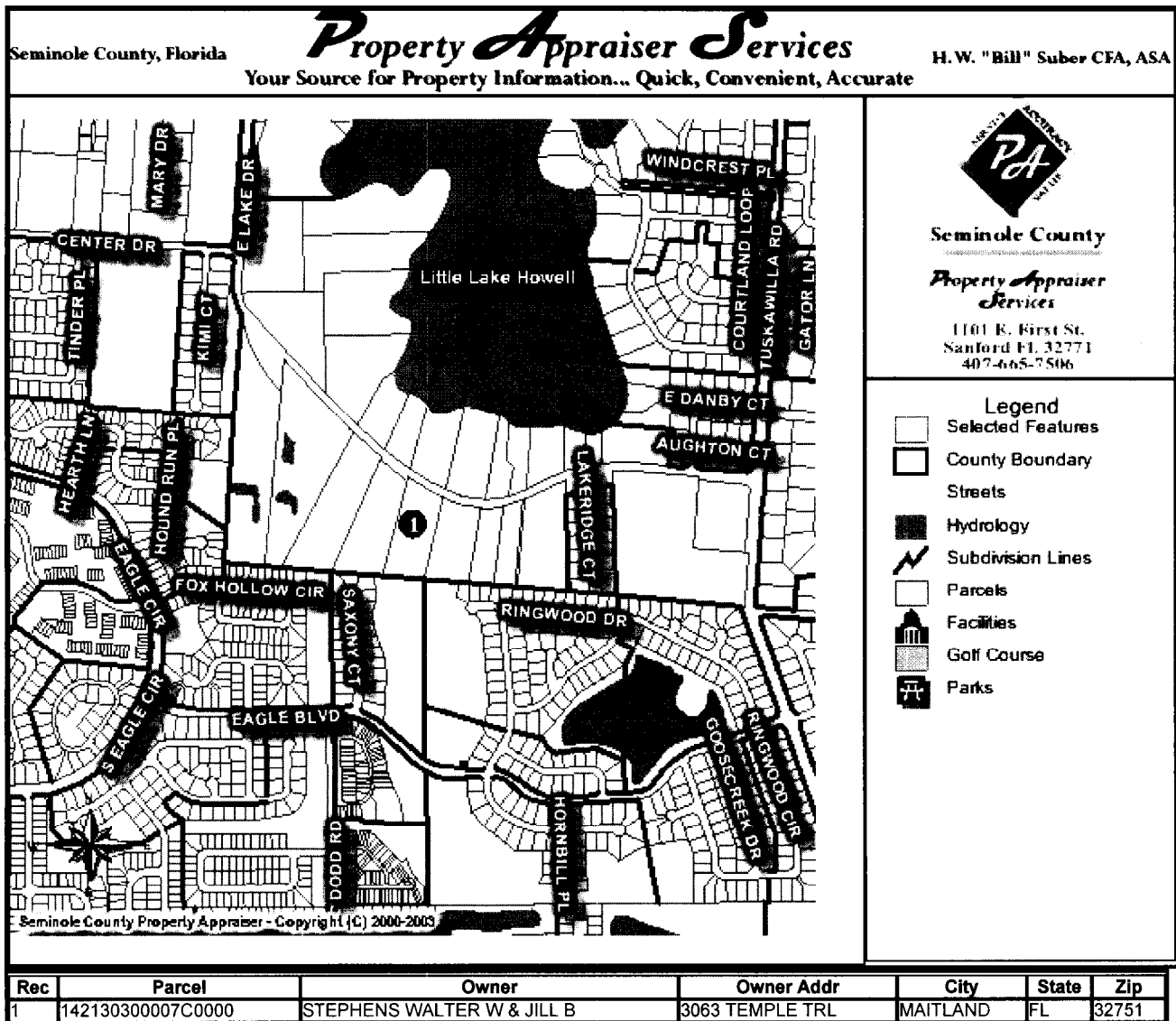
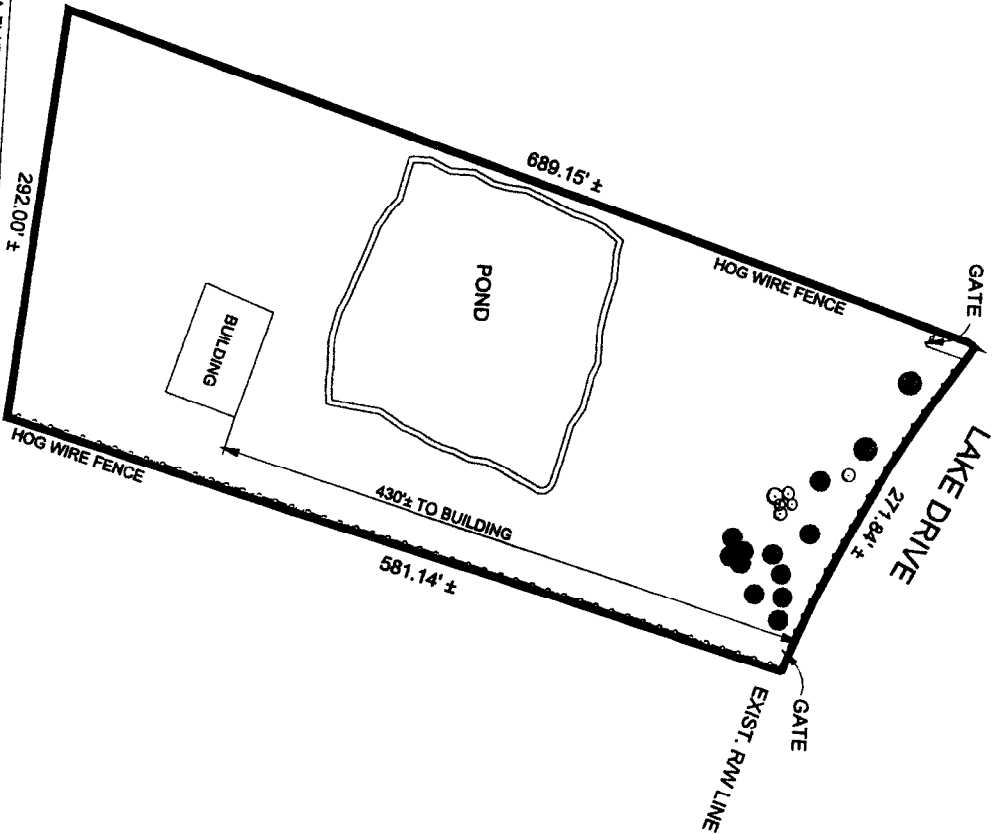
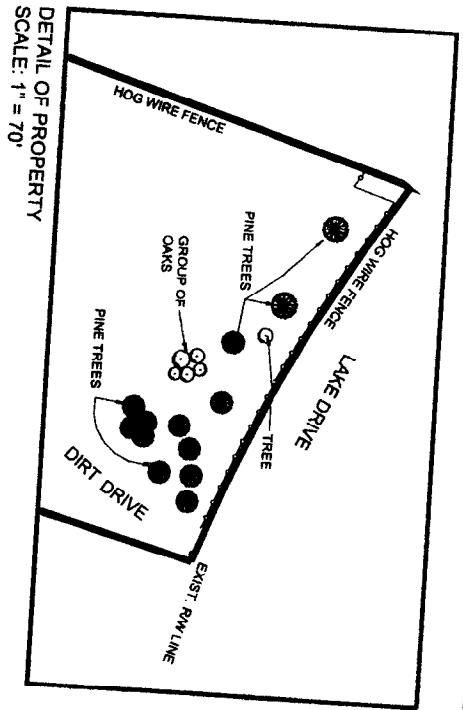
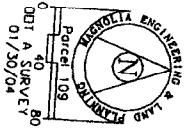


EXHIBIT A

**PROPERTY SKETCH PARENT TRACT - BEFORE TAKING**



**EXHIBIT B**



BEFORE TAKING: 3.996 AC±

M: 2002/02-178/PHASE 2/GRUP 1/109/PARCEL 109.dwg

**M&E** MAGNOLIA ENGINEERING & LAND PLANNING, INC.  
276 S. WASHINGTON ST. #111  
SEMIPOLE COUNTY, FLORIDA 32075-1111

02-178 LAKE DRIVE  
PARCEL 109 - BEFORE TAKING  
SEMIPOLE COUNTY  
FLORIDA

SHEET 1

**PURCHASE AGREEMENT  
FEE SIMPLE**

STATE OF FLORIDA     )  
COUNTY OF SEMINOLE )

**THIS AGREEMENT** is made and entered into this 9<sup>th</sup> day of JULY, 2004, by and between WALTER W. STEPHENS and JILL B. STEPHENS, HIS WIFE, whose address is 3063 Temple Trail, Winter Park, FL 32789 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**

**See, attached Exhibit A**

**Parcel I. D. Number: 14-21-30-300-007C-0000**

**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 FIFTY THOUSAND DOLLARS (\$50,000.00). 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) 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.

(c) 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.

(d) 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.

(e) 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.

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

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

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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]  
SIGNATURE

Garland H. Johnson  
PRINT NAME

[Signature]  
SIGNATURE

Judy P. King  
PRINT NAME

[Signature]  
SIGNATURE

Garland H. Johnson  
PRINT NAME

[Signature]  
SIGNATURE

Judy P. King  
PRINT NAME

ATTEST:

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

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

[Signature]  
County Attorney

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PROPERTY OWNERS:

[Signature]  
Walter W. Stephens

ADDRESS: 3063 Temple Trail  
Winter Park, FL 32789

[Signature]  
Jill B. Stephens

ADDRESS: 3063 Temple Trail  
Winter Park, FL 32789

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

By: \_\_\_\_\_  
Daryl G. McLain, Chairman

Date: \_\_\_\_\_

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

filename and path

# LEGAL DESCRIPTION OF THE TAKING

## EXHIBIT "A" LEGAL DESCRIPTION

### RIGHT-OF-WAY FEE SIMPLE

PROJECT: Lake Drive

OWNER: ELCA Loan Fund, A Minnesota Non-Profit Corporation

R/W PARCEL NO.: 109

TAX I.D. NO.: 14-21-30-300-007C-0000

CONSULTANT: Lochrane Engineering, Inc.

A part of that parcel of land described in Official Record Book 2331, page 575 and in Official Record Book 2121, page 1145 as recorded in the Public Records of Seminole County, Florida being that portion of Section 14, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Commence at the Northwest corner of Government Lot 4, Section 13, Township 21 South, Range 30 East, said corner being the intersection of the West line of said Section 13 and the Southerly Grant line of the Philip R. Young Grant; thence N84°55'54"W along said Southerly Grant line a distance of 967.22 feet; thence N84°55'33"W a distance of 337.56 feet to a point on the East line of that parcel of land described in Official Record Book 2121, page 1053, Public Records of Seminole County, Florida; thence N16°34'41"E along said East parcel line a distance of 658.28 feet for a Point of Beginning; thence continue N16°34'41"E along said East parcel line a distance of 30.87 feet to a point on the Right of Way line of Lake Drive as recorded in Deed Book 196, page 327, Public Records of Seminole County, Florida, said point being on a non-tangent curve concave Northeasterly, having a radius of 984.93 feet, thence from a chord bearing of S62°47'57"E, run along said Right of Way line an arc length of 271.84 feet through a central angle of 15°48'50"; thence S14°31'45"W a distance of 35.06 feet to a point on a non-tangent curve concave Northeasterly, having a radius of 1,012.93 feet; thence, from a chord bearing of N63°38'16"W, run along said curve an arc length of 189.33 feet through a central angle of 10°42'33" to the Point of Tangency; thence N58°17'00"W a distance of 84.21 feet to the Point of Beginning.