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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: Pam Hastings, Administrative Manager/Public Works Department *[Signature]*  
Kathleen Myer, Principal Engineer/Engineering Division *[Signature]*

DATE: September 12, 2003

SUBJECT: Settlement Authorization  
Dodd Road Project  
Parcel Nos.: 152, 752 and 852  
Owner(s): Amberwood Unit III Community Association, Inc.  
*Seminole County vs. Erdman, et al.*  
Case No.: 01-CA-1900-13-K

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) for Parcel Nos. 152, 752 and 852 on the Dodd Road Project. The recommended mediated settlement is at the total sum of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00), inclusive of all land value, severance damage, statutory interest, benefit obtained attorney fees, and reimbursable costs. An apportionment procedure between Amberwood Unit III, Community Association, Inc., Hunter Development Inc. and Complete Interior's Inc. occurred. Fees for the apportionment are not included. The \$60,000.00 is allocated by the owners:

- |     |                                      |                  |
|-----|--------------------------------------|------------------|
| (1) | Land, Severance Damage, and Interest | \$42,000.00;     |
| (2) | Benefit Obtained Attorney Fees       | \$ 2,100.00; and |
| (3) | Costs                                | \$15,900.00.     |

## **I PROPERTY**

### **A. Location Data**

Parcel Nos. 152, 752 and 852 are located on the west side of Dodd Road just north of Dike Road.

### **B. Street Address**

Street addresses are not assigned to subdivision common areas. A location map is attached as Exhibit A and a parcel sketch is attached as Exhibit B.

## **II AUTHORITY TO ACQUIRE**

The BCC adopted Resolution No. 95-R-230, on September 26, 1995, finding that Dodd Road was necessary and served a public purpose and was in the best interest of the citizens of Seminole County.

## **III ACQUISITIONS AND REMAINDER**

Parcel No. 152 is a fee simple acquisition of 0.777 acres. Parcel No. 752 is a temporary construction easement of 8,617 s.f. Parcel No. 852 is a permanent easement of 4,988 s.f.

The remainder consists of 1.118 acres encumbered by the permanent and temporary easements.

## **IV APPRAISED VALUES**

The Dodd Road project was stopped twice and later restarted twice. Each time, including the original start of the project, appraisals were performed by the County. Each of these reports was produced to the owners.

### **A. County Appraisal Reports**

(1). Nations 1995 Report. A County report was prepared by Ron L. Nation of Just Valuation, Inc., and opined full compensation to be \$29,200.00. The Nations report was produced to the owners but was not utilized by the County after the project was stopped.

2. Bullard 1997 Report. A County report was prepared in 1997 by Gary E. Bullard of Bullard and Associates, Inc., and opined full compensation to be \$70,700.00. The Bullard report was produced to the owners but was not utilized by the County after the project was stopped the second time.

3. Current Report. The County's current report was prepared in 2001 and opined full compensation to be \$35,300.00.

#### **B. Owner's Appraisal Report**

The owner's report was prepared by Gary M. Pendergast of Florida Real Estate Analysts, Inc. and opined full compensation to be \$94,600.00.

The Pendergast report opined that the common area which was improved with a small retention pond was developable as additional lots.

### **V NEGOTIATION**

At mediation, the issue was the highest and best use of the property. The County determined that the highest and best use was continued common/conservation area. Thus, the County's report was at \$35,300.00. The owner's report opined that the highest and best use was buildable lots. The owners contended full compensation to be \$94,600.00.

The County performed research on the development of the 1983 Amberwood subdivision. The drainage calculations from 1983 proved that the common area was not developable in 1983 or presently into more lots. Thus, the owner's claimed highest and best use was shown to be impossible. However, the County's 1997 Bullard report at \$70,700.00 was troublesome in negotiation.

The owners allocated \$42,000.00 to settle land value, severance damage and statutory interest. The settlement for land value is only \$6,700.00 above the County's value and \$28,700.00 less than the County's 1997 Bullard report. The owners recover only 11.3% of their asserted claim above the County's value. This is because the owner's highest and best use report was shown to be impossible. The owner's essentially were left to negotiate from the County's 1997 Bullard report which even though dated had been performed by the County.

### **VI ATTORNEY FEE REIMBURSEMENT**

The owners allocated \$2,100.00 of the total \$60,000.00 settlement to benefit obtained attorney fees. The settlement sum for land is \$42,000.00 and the County's first written offer was \$42,875.00. Under a statutory benefit obtained calculation, the attorney's fee would be \$0.00. Thus, the allocated \$2,100.00 is an owner allocation not a statutory calculation.

### **VII COST REIMBURSEMENTS**

The owners claimed cost reimbursements totaling \$22,385.00 allocated:

A)	Appraisal Costs	\$12,285.00;
B)	Planning Costs	\$ 3,495.00; and
C)	Engineering	\$ 6,605.00
	<b>TOTAL COSTS</b>	<b>\$22,385.00</b>

In negotiation, costs were reduced down to \$15,900.00 to be allocated by the owners. This is a 29% reduction in costs.

### VIII ANALYSIS

The allocation of the total of \$60,000.00 was negotiated as to \$15,900.00 for costs. The remaining allocation of \$2,100.00 to benefit obtained attorney fees and \$42,000.00 for land value was the owner's allocation.

The land settlement at \$42,000.00 and the low benefit obtained attorney fees result from a good research effort to prove the owner's highest and best use position to be impossible.

Costs are more reasonable here than on other Dodd Road parcels because it appears that only one set of appraisal and engineering analysis were performed by the owners.

Interestingly, the total inclusive settlement at \$60,000.00 for land, severance damage, interest, benefit obtained attorney fees, and all reimbursable costs is less than the County's 1997 land value report of \$70,700.00. This fine result was obtained because the County's research efforts on the highest and best use were excellent, as well as, the current Lobban appraisal report.

### IX APPORTIONMENT FEE HEARING

Ownership of the land taken was disputed as between three defendants, Amberwood Unit III, Community Association, Inc., Hunter Development, Inc. and Complete Interiors, Inc. The Court's apportionment order apportions the proceeds 80% to Amberwood Unit III Community Association Inc., 20% to Hunter Development, Inc., and 0% to Complete Interiors, Inc.

Attorney fees for apportionment proceedings are a separate and distinct matter. *Section 73.092(2), Florida Statutes*, provides that the County reimburse those fees based upon reasonable hours and reasonable rates.

Presently, motions have been filed with Amberwood claiming \$13,391.00 and Hunter Development claiming \$2,275.00 in apportionment. Thus, the County's total exposure is \$15,666.00. This apportionment matter remains outstanding to be settled or addressed at hearing.

## **X COST AVOIDANCE**

By this settlement, the County avoids the following additional costs beyond those for which it is already liable by law:

- a. A potential jury verdict in excess of the \$42,000.00 allocation to land value, severance damage, and statutory interest;
- b. Attorney fees for benefit obtained in excess of the owner's allocation of \$2,100.00;
- c. Costs incurred to continue above the settlement sum of \$15,900.00;
- d. All costs that could be incurred at a cost hearing.

## **RECOMMENDATION**

County staff recommends that the BCC approve this settlement in the total inclusive amount of \$60,000.00.

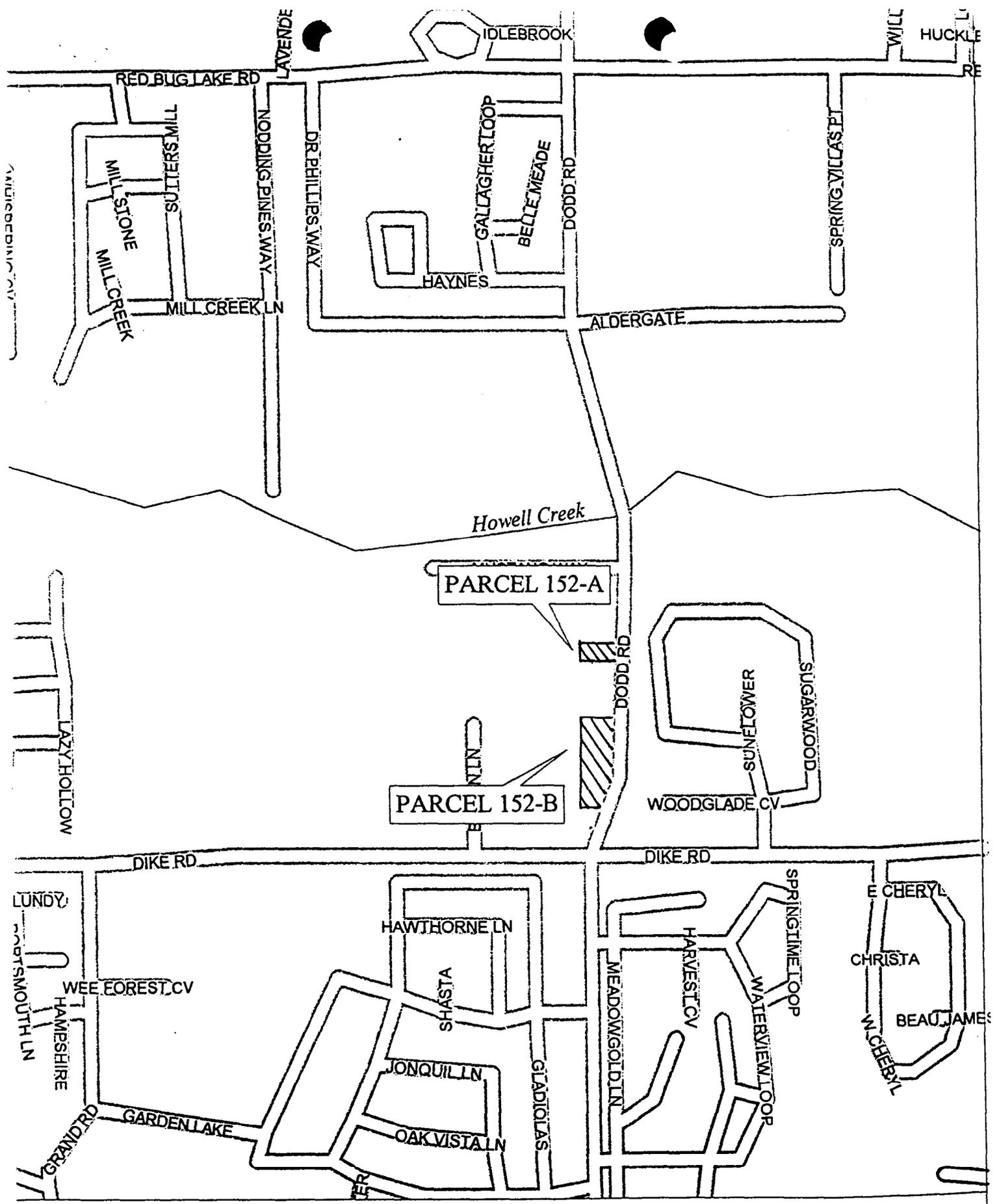
HMB/sb

Attachments:

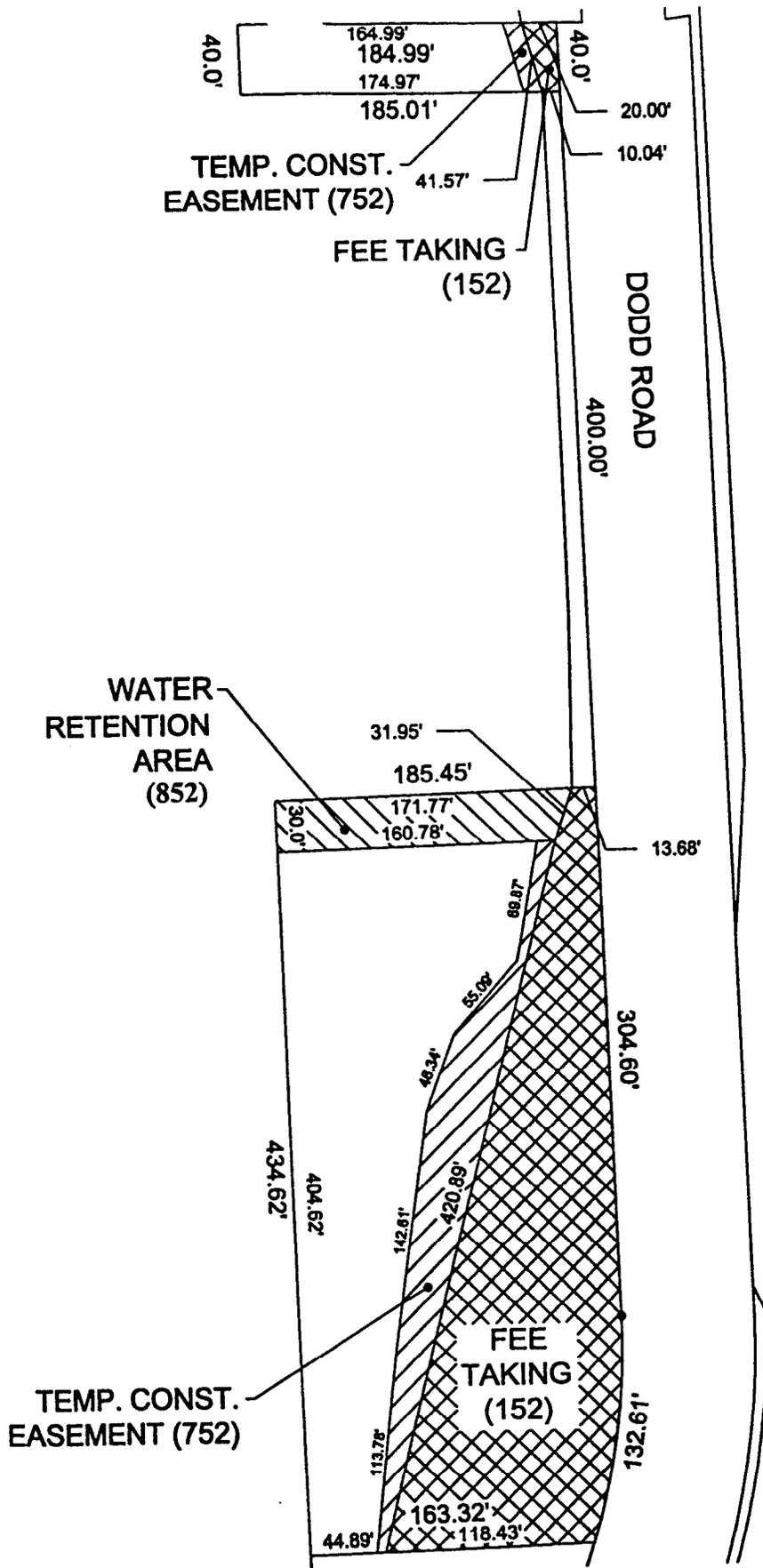
Exhibit A

Exhibit B

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# SUBJECT LOCATION MAP



50' 0 100'  
 SCALE  
 1"=100'  
 NOT A SURVEY

**DODD ROAD EXPANSION PROJECT  
 ACQUISITION TRACT**