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COUNTY ATTORNEY'S OFFICE
MEMORANDUM

TO: Board of County Commissioners

THROUGH: Robert McMillan, County Attorney

FROM: David G. Shields, Assistant County Attorney *DGS*
Ext. 5736

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
David Nichols, Principal Engineer/Engineering Division *Duf 9-11-06*

DATE: September 12, 2006

SUBJECT: Settlement Authorization
Eden Park Avenue road improvement project
Parcel No. 101; Aroldo Novoa and Maria V. Novoa
Seminole County v. Novoa, et al.
Case No. 05-CA-1237-13-G

This Memorandum requests authorization by the Board of County Commissioners (BCC) to accept the Owners' Offer of Judgment on Parcel No. 101 at \$76,797.00 allocated as follows:

- \$65,000.00 land value, severance damage and statutory interest
- \$10,197.00 statutory attorney's fee
- \$ 1,600.00 experts' fees and costs

I PROPERTY

A. Location Data

Parcel No. 101 is located along the west side of Eden Park Avenue, immediately south of Rose Arbor Lane, within unincorporated Seminole County, Florida. A location map is attached as Exhibit A.

B. Property Address

The property address is 9326 Eden Park Avenue, Altamonte Springs, Florida.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2004-R-73 on April 13, 2004, authorizing the acquisition of Parcel No. 101. The Eden Park Avenue road improvement project was found to be necessary and serves a public purpose and is in the best interests of the citizens of Seminole County. The Order of Take occurred on August 31, 2005, with title vesting in Seminole County on September 7, 2005, the date of the good faith deposit in the amount of \$36,200.00.

III ACQUISITIONS AND REMAINDER

The acquisition totals 6,581 square feet in fee simple. A parcel sketch is attached as Exhibit B.

IV APPRAISED VALUES

The County's original report dated January 20, 2005, was prepared by Clayton, Roper, and Marshall, and reported full compensation to be \$34,100.00. The County's updated appraisal report dated July 21, 2005, reported full compensation at \$36,200.00 with \$16,800.00 as the value for the land, \$14,500.00 for the improvements taken, and \$4,900.00 as the cost to cure.

The owners did not prepare an appraisal report but did consult with an appraiser. The owners also apparently received a written offer recently to purchase the remainder parcel for \$620,000.00. Based on this offer, the owners concluded the land value of Parcel No. 101 was \$50,604.00. The owners also obtained a \$36,832.00 contractor's estimate for the improvements taken. Based on the offer and the estimate, the owners concluded full compensation should be \$86,832.00, plus costs and attorney fees.

V BINDING OFFER/STATUS OF THE CASE

The County's Board approved initial written offer was \$34,100.00.

The owners on August 2, 2006, demanded \$80,000.00, exclusive of fees and costs. The County countered at \$50,000.00, exclusive of fees and costs, for land and severance damage. The owners then served a formal Offer of Judgment for \$65,000.00, exclusive of fees and costs.

VI ANALYSIS

The main issues in this case are the differences in the estimates for the land value and for the cost of improvements taken. Having a full appraisal from the owners would have been very helpful in evaluating the reasonableness of the owners' \$65,000.00 Offer of Judgment. However, the owners have thus far limited their expert costs to \$1,600.00. If the owners elected to perform a full appraisal, the County would

be obligated to pay the cost and some of the appraisal costs in other recent cases have been well into the five figures.

The area of taking is vacant land, except for a fence, and the County's appraisal valued the land area of taking as vacant. The remainder parcel has a 2,673 square-foot house on it and the owners did not appropriately adjust the \$620,000.00 offer to account for the house. Only an appraiser is qualified to make such an adjustment, however, and one of the advantages of this settlement for the County is avoiding additional costs.

The County's appraisal report provides a total value of \$14,500.00 for improvements taken whereas the property owners' appraiser opines \$36,832.00, more than double for the improvements taken. The reason for this difference stems mainly from differing individual cost estimates for specific items in the area of taking.

The Offer of Judgment when made and accepted settles the case as to land value, severance damage, and statutory interest and sets the amount of statutory attorney's fees at 33% of the benefit; however, it leaves costs outstanding. If rejected by the County, this Offer of Judgment could impact attorney's fees. Specifically, if a potential verdict reached by the jury were more than the amount of the offer of judgment, which in this case is \$65,000.00, the attorney fees would be based on the number of hours expended, not on the statutory amount of 33% of the benefit. At this time, the attorney's fee based on 33% of the benefit in this case is approximately \$10,197.00. If the County were to reject the Offer of Judgment, the County would likely incur the expense of an additional appraisal report updated to the actual date of deposit as well as run the risk of attorney's fees based on actual hours spent and increased cost exposure for experts in proceeding to trial.

As discussed above, the owners at present claim only \$1,600.00 for costs. If the case is not settled based on the current Offer of Judgment, their costs could amount to a substantial portion of the \$15,000.00 between the County's last offer of \$50,000.00 and the \$65,000.00 settlement for owner compensation.

Therefore, the authorization to accept the Owners' Offer of Judgment of \$65,000.00 is reasonable considering the additional risks and costs of litigation.

VII RECOMMENDATION

County staff recommends that the BCC accept the Owners' Offer of Judgment in the amount of \$65,000.00 for land, severance damage and statutory interest, and \$10,197.00 statutory attorney's fee and \$1,600.00 for expert's costs, for a total settlement at \$76,797.00.

DGS/dre

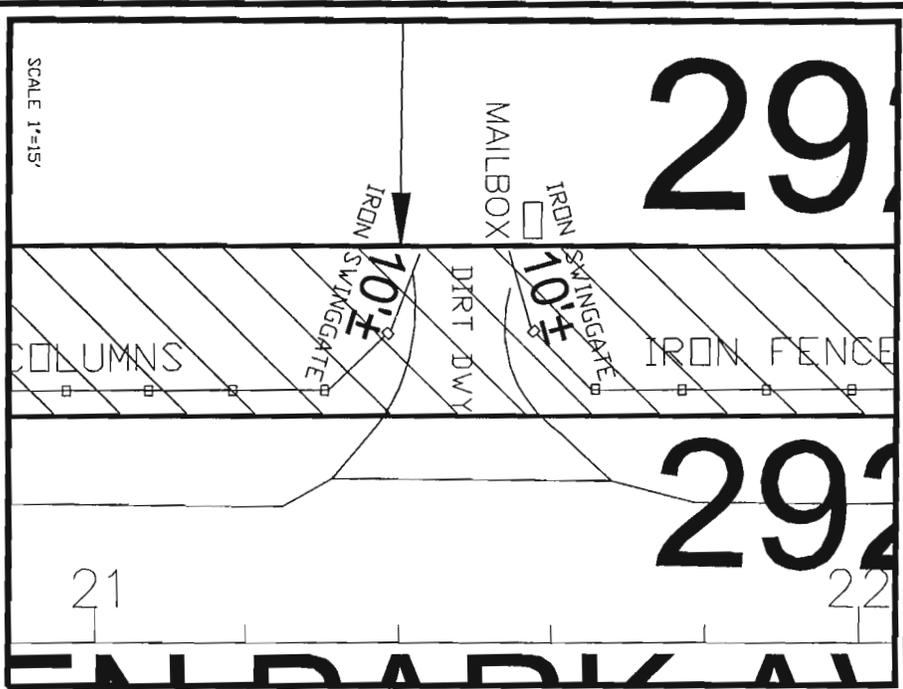
Attachments:

Exhibit A - Location Map

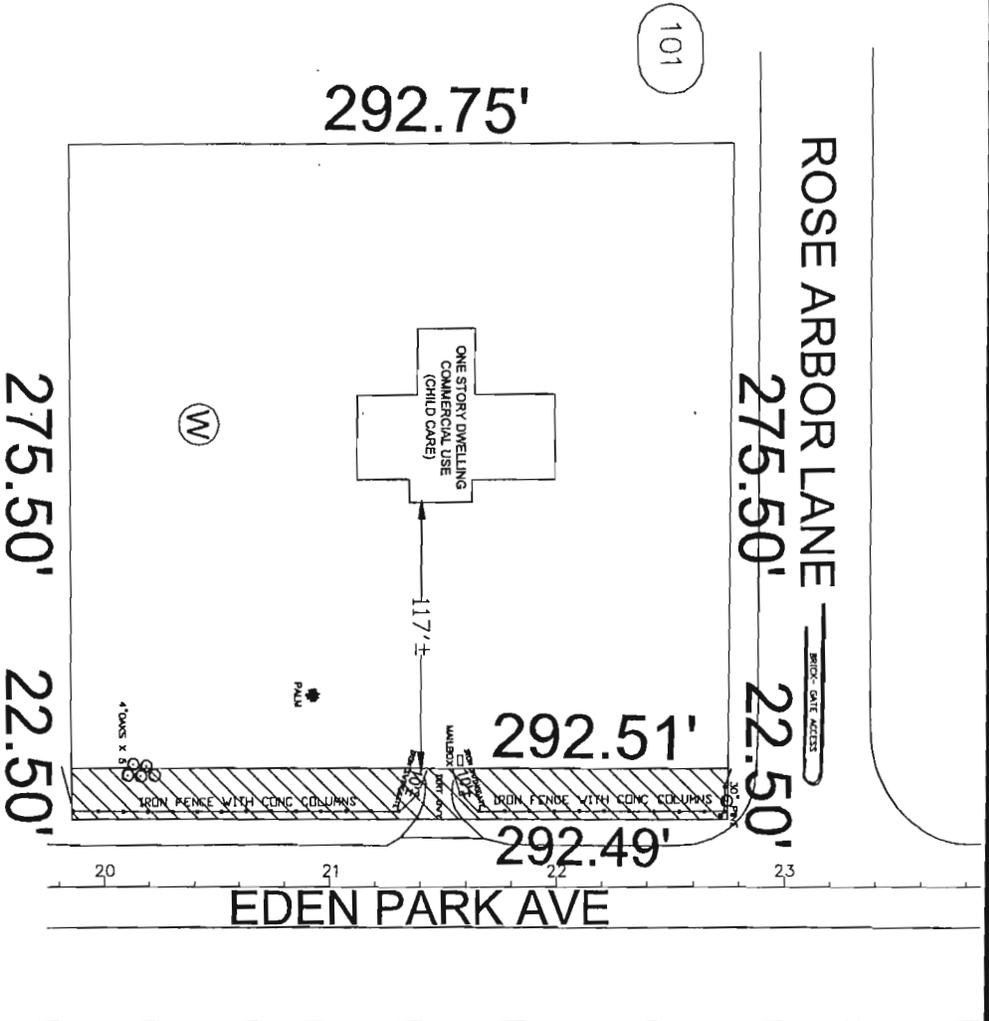
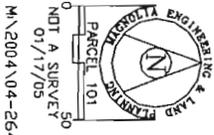
Exhibit B - Sketch

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PROPERTY SKETCH - TAKING



BEFORE TAKING: 2,002 AC±
 AREA TAKEN: 6,581 SF±



MAGNOLIA ENGINEERING
 & LAND PLANNING, INC.
 246 N. WESTMORE DRIVE,
 ALTA MOUNTAIN, SEBASTIAN, FL 32714
 PHONE: 407-772-1929 FAX: 407-772-1340

04-264 EDEN PARK AVENUE
 PARCEL 101 - AREA TAKEN
 SEMINOLE COUNTY
 FLORIDA

SHEET
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EXHIBIT B