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**COUNTY ATTORNEY'S OFFICE  
MEMORANDUM**

TO: Board of County Commissioners

FROM: Robert A. McMillan, County Attorney  
Ext. 7257

CONCUR: Pam Hastings, Administrative Manager/Public Works Department  
David V. Nichols, P.E./Engineering Division

DATE: October 17, 2005

SUBJECT: Settlement Authorization  
Airport Boulevard Phase III road improvement project  
Amended Parcel Nos.: 106, 706 (Parts A & B), and 806  
Owner: 7-Eleven, Inc.  
*Seminole County v. 7-Eleven, Inc., et al.*  
Case No.: 02-CA-1200-13-K

This Memorandum requests settlement authorization by the Board of County Commissioners (BCC) as to amended Parcel Nos. 106, 706 (Parts A & B) and 806 on the Airport Boulevard Phase III project. The recommended settlement is at the total sum of \$221,986.08 inclusive of all land value, severance damage, business damage, statutory interest, statutory attorney's fee and cost reimbursements. The total sum is allocated as follows:

\$165,000.00	Land Value and Business Damage
\$ 19,602.00	Statutory attorney's fee; and
\$ 37,384.08	Cost reimbursements

**I PROPERTY**

**A. Location Data**

Parcel Nos. 106, 706 (Parts A & B) and 806 are improved with a convenience store with gas facilities. This is a corner property with frontage on both Airport Boulevard and County Road 46A. A location map is attached as Exhibit A and a parcel sketch is attached as Exhibit B.

**B. Street Address**

The street address of the property is 2707 West 25<sup>th</sup> Street, Sanford, Florida 32771.

**II AUTHORITY TO ACQUIRE**

The BCC adopted Resolution No. 98-R-77 on April 14, 1998, authorizing the acquisition of Parcel Nos. 106 (fee simple 6,835 S.F.), 706 (Parts A & B; temporary construction easements totaling 351 S.F.), and finding that the Airport Boulevard road improvement project served a public purpose and was in the best interests of the citizens of Seminole County.

The case was filed on May 17, 2002; however, the order of take was delayed to permit revision to the design plans to address access issues by gasoline tanker trucks, to avoid taking the convenience store signage and to eliminate the need to construct a retaining wall and handrail. During negotiations, the owner's attorney and engineer proposed changes to the design that would result in less property being needed for the project and would result in the elimination of the retaining wall and handrail as well as make the planned demolition of the store signage unnecessary. The proposed changes were reviewed by Engineering and incorporated into the construction plans. The legal descriptions and property interest to be acquired were revised.

The revisions significantly reduced the damages that would have resulted from the original plans but resulted in increased exposure for a non-monetary benefits claim by the property owner.

A Stipulated Order of Take was entered on August 6, 2004, with title vesting in Seminole County on August 10, 2004. The legal descriptions and property interests taken were amended so that only the property necessary for the project was acquired. The revised construction plans were attached to the Stipulated Order of Take with the County committing to construction in accordance with the plans.

The amended legal descriptions and property interests actually acquired are as follows: Parcel No. 106, a fee simple take at 6,604. S.F.; Parcel No. 706 (Parts A & B), temporary construction easements totaling 4,017.S.F.; and Parcel No. 806, a permanent slope easement of 734 S.F.

### **III ACQUISITIONS AND REMAINDER**

The amended fee acquisition from Parcel No. 106 totaled 6,604 S.F. leaving a remainder of 33,554 S.F. A portion of the remainder will be encumbered by the permanent slope easement.

### **IV APPRAISED VALUES**

#### **A. County Report**

An appraisal report was prepared for the County by Pomeroy Appraisal Services related to the original legal descriptions. The report opined full compensation to be \$96,000.00 as of May 10, 2001. The report opined land value to be \$11.00 per square foot. The report date is three years outdated and values the earlier legal descriptions.

The amended legal descriptions with the date of value as of August 10, 2004, have not been appraised for the County. The proposal to appraise by the Appraisal Group of Central Florida, Inc., totals \$24,380.00 inclusive of engineering support work. The notice to proceed with this proposed appraisal is on hold pending this potential settlement. If settlement is not achieved by this recommendation, then an appraisal report will need to be prepared.

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

The owner had a preliminary report prepared by Calhoun, Dreggors, and Associates, Inc., to opine full compensation for land at \$156,800.00. This report addresses the property actually acquired as of August 10, 2004. The land value per square foot is \$16.00.

### **V BUSINESS DAMAGES**

The 7-Eleven store has been in operation for many years and qualifies for business damages.

#### **A. County Report**

A business damage analysis has not been performed on behalf of the County for the amended acquisitions.

The costs for a marketing consultant and CPA to prepare a report are estimated at \$10,000.00. This expenditure is presently on hold pending this settlement. If settlement is not achieved by this recommendation, then a business report will need to be prepared.

**B. Owner's Business Damage Report**

The owner's have had a preliminary business damage report prepared with a marketing report by Gold and Associates and business damage report by Morgenstern, Phifer and Messina, P.A. to opine business damages totaling \$17,433.00. The business damages involve business damage down time during the cure implementation.

**VI BINDING WRITTEN OFFER/NEGOTIATION**

The BCC approved written offer under the earlier appraisal report was \$105,600.00 for land value. The County did not present a business damage offer because no report has been prepared.

The owner's present position on land value and business damage totals \$174,233.00. Negotiations related to the difference in per square foot values, business downtime, and the non-monetary benefit attorney's fee claim.

The per square foot values were \$16.00 and \$11.00 per square foot. However, the County's appraisal was three years old. As to business damages, the County contended that the design plan changes of keeping the business signage, improved driveways, and elimination of the retaining wall and handrail had the effect of eliminating the business damages.

The owner's identification of an alternative design and the resulting revision of the plans results in the non-monetary benefits claim. In negotiation, the owner has agreed not to pursue the non-monetary benefits claim if this inclusive settlement at \$221,986.08 is accomplished.

The negotiated sum for land value, severance damages, and business damages totals \$165,000.00.

**VII ATTORNEY'S FEES AND COSTS**

**A. Attorney's Fee**

In accordance with this proposed settlement, the parties agree to resolve attorney fees using the County's offer of \$105,600.00 and the land and business damage settlement sum of \$165,000.00 to produce a monetary benefit of \$59,400.00, which results in an attorney's fee totaling \$19,602.00.

The owner agrees, by means of this settlement, not to pursue a non-monetary benefit claim for additional attorney fees.

**B. Cost Reimbursements**

The owner claimed cost reimbursements totaling \$42,099.67 allocated:

(1)	Appraisal	\$ 5,451.00
(2)	Gasoline Marketing	\$ 1,050.00
(3)	Retail Marketing	\$ 500.00
(4)	Business CPA	\$10,971.25
(5)	Engineering	\$23,013.80
(6)	Exhibit Preparation	\$ 339.33
(7)	Miscellaneous	<u>\$ 774.29</u>

**TOTAL** **\$42,099.67**

The negotiated settlement sum for costs totals \$37,384.08, allocated:

(1)	Appraisal	\$ 5,451.00
(2)	Gasoline Marketing	\$ 1,050.00
(3)	Retail Marketing	\$ 0.00
(4)	Business CPA	\$ 8,538.75
(5)	Engineering	\$22,005.00
(6)	Exhibit Preparation	\$ 339.33
(7)	Miscellaneous	<u>\$ 0.00</u>

**TOTAL** **\$37,384.08**

In negotiation some hourly rates were reduced, the marketing duplication eliminated, and some non-reimbursable costs were taken out of the claim.

## VIII RATIONALE AND COST CONTROL

The negotiated settlement is close to the owner's preliminary values for land and business. The current spread on land value is between \$16.00 and \$11.00 per square foot. The County's \$11.00 value is almost three years old. Given the real estate market, it is most likely that a new appraisal if performed would be at a value significantly greater than \$11.00.

The owner's business claim is at \$17,433.00 for downtime during the cure implementation, which involves relocation of pump valves and back flow preventers in the area of take. If a business damage report were to be prepared by the County, it is certain that some minimal business downtime would be found because the relocations must occur.

Given the circumstances, it is not prudent to issue the new appraisal and business report notices to proceed at a cost of \$34,380.00 only to find that the County's 2004 value will be greater than the \$11.00 per square foot found in 2002 and that some amount for business downtime will be compensable.

Similarly, it is not prudent to require the owner to produce full reports rather than the present preliminary reports. The County will be responsible for the additional costs. Further, if full reports are prepared, it is expected that the values would increase.

The revision of the design plans to improve the radial drives, provide the slope which allows the sign to remain, and elimination of the retaining wall and handrail benefits the County in that the damages without the changes are extensively reduced.

Pursuant to this proposed settlement, no non-monetary benefit claims will be pursued. The costs of a non-monetary benefit trial are avoided.

Present circumstances find that the settlement at \$221,986.08 is in the best interest of the County.

## **IX RECOMMENDATION**

County staff recommends that the BCC approve this settlement in the total amount of \$221,986.08 inclusive of land value, business damages, severance damage, statutory interest, statutory attorney's fees and cost reimbursements.

HMB/dre

Attachments:

Exhibit A - Location map

Exhibit B - Parcel Sketch

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EXHIBIT A

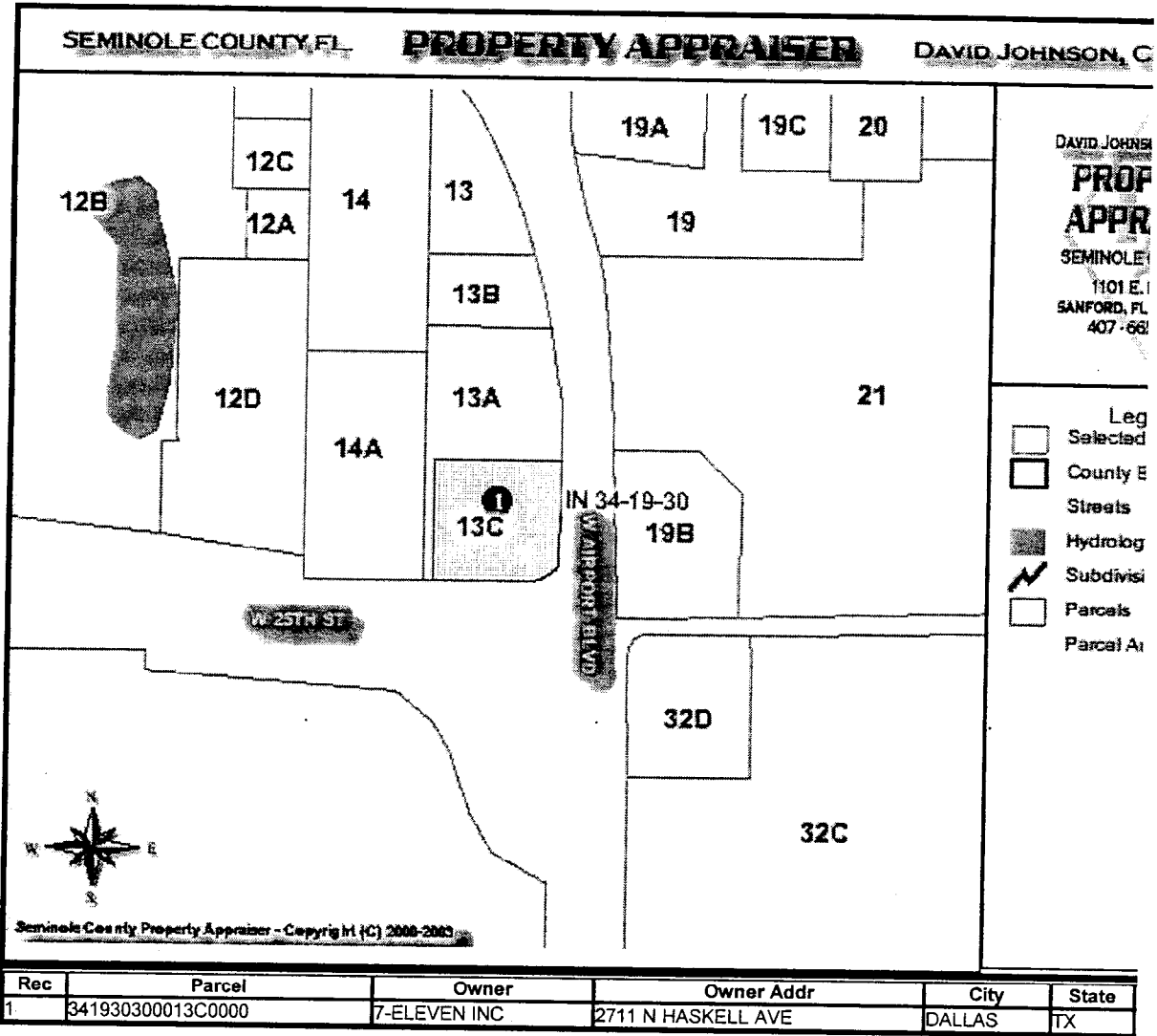
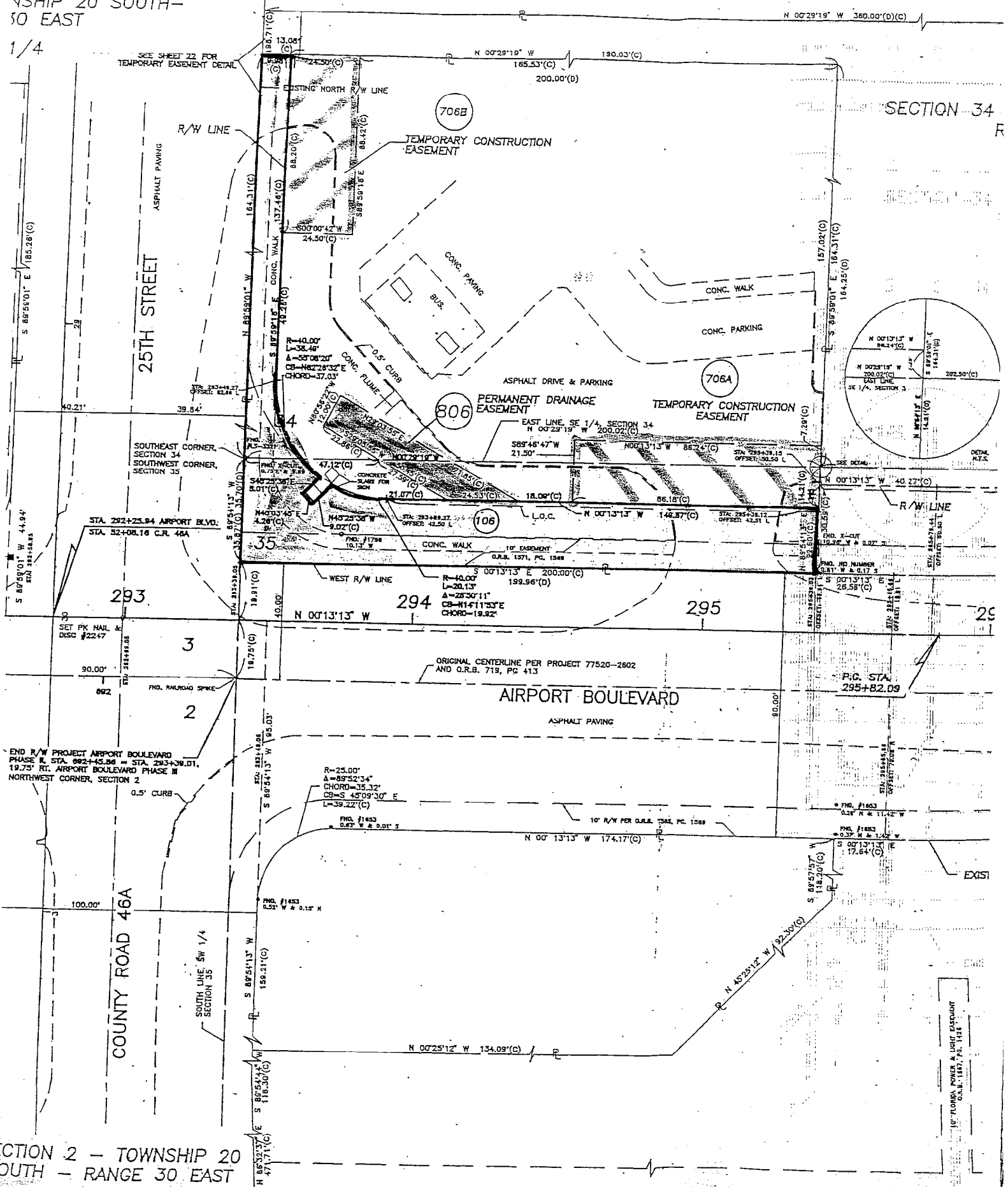


EXHIBIT B

TOWNSHIP 20 SOUTH -  
RANGE 30 EAST

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SECTION 2 - TOWNSHIP 20  
SOUTH - RANGE 30 EAST