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**COUNTY ATTORNEY'S OFFICE**  
MEMORANDUM

To: Board of County Commissioner7

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

From: Henry M. Brown, Assistant County Attorney *HMB*  
Ext. 5736

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

Date: November 12, 2002

Subject: Accept or reject Reverse Offer of Judgment and authorize issuance  
of a County Offer of Judgment  
East Lake Mary Boulevard Segment 1  
*Seminole County v. American Bronze Fine Art Foundry, inc., et al.*  
Case No. OO-CA-191 O-I 3-L  
Parcel No. 102  
Owners: American Bronze Fine Arts Foundry, Inc.

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This memorandum discusses the acceptance or rejection of the owner's Reverse Offer of Judgment and issuance of a County Offer of Judgment as to Parcel No. 102. Acceptance of the owner's Reverse Offer of Judgment at \$99,900.00 would settle the case as to land value, severance damage, business damage, and statutory interest excluding attorney's fees and costs. Rejection of the Reverse Offer of Judgment allows the case to proceed to mediation and trial; however, it exposes the County to attorney fees calculated based on an hourly basis.

| **PROPERTY**

A. Location Data: Parcel No. 102 is a fee simple acquisition of 6,020 square feet across the frontage of the property ranging in depth from 5 feet at the west property line to 30 feet at the east property line. See, acquisition sketch attached as Exhibit A.

B. Address:

1650 East Lake Mary Boulevard  
Sanford, FL 32773

## II **AUTHORITY TO ACQUIRE**

The Board of County Commissioners (BCC) adopted Resolution No. 96-R-187 on September 10, 1996, authorizing the acquisition of Parcel No. 102, and finding that East Lake Mary Boulevard was necessary and served a public purpose and is in the best interest of the citizens of Seminole County.

## III **ACQUISITION/REMAINDER**

The acquisition is from the frontage and **impacts** the parking arrangements. The owner has asserted that the acquisition consumes a grass area that had been used and could have been used in the future for display of bronze artwork.

The American Bronze Fine Art Foundry qualifies for business damages if damages result from the acquisition.

## IV **APPRAISED VALUES**

### A. County Reports:

The County's appraisal report was prepared by Clayton, Roper, and Marshall and opines compensation for land and severance damage to be \$28900.00. The report includes a parking lot cure to restore the parking arrangement. A grass area is also acquired. The cure re-establishes and improves the display area.

The County's business damage consultants find an extremely limited historical use of the grass area for display and find the area west of the driveway which was not acquired to be adequate for any future display. Additionally, the County's design plans improve truck access to the property and the County's cure plan improves display areas. Thus, the business damage would be minimal and estimated not to exceed \$7,500.00 as business damages during the implementation of the cure.

### B. Owner Reports:

The owner has produced no real property reports and will not produce them until some time after the acceptance or rejection of offers of judgment.

By statute, business owners are required to present the County with a first business damage offer and report. The initial offer by the business owner for business damages was \$262,208.00.

However, in discovery, the owner has produced a cure plan at a cost of \$70,165.55. The cure would appear to mitigate the business damage claim.

By letter accompanying the Reverse Offer of Judgment, the owner relates that its total claim including land and business damage will likely exceed \$250,000.00 at trial. If the owner is fully successful at trial, then the County's upside exposure would be a jury award of the \$250,000.00, statutory interest estimated at about \$46000.00, attorneys fees based on hourly rates which can only be estimated as significant and far in excess of the percentage awards perhaps even exceeding \$50,000.00, and expert costs which probably will exceed \$50,000.00.

## **V OWNER'S REVERSE OFFER OF JUDGMENT AND ITS EFFECTS**

### **A. Reverse Offer of Judgment:**

*Section 73.032, Florida Statutes*, authorizes the issuance of reverse offers of judgment by owners, if the judgment amount is less than \$100,000.00. Here, American Bronze has served a Reverse Offer of Judgment at \$99,900.00 for all land and business damages exclusive of all attorney's fees and expert cost reimbursements.

### **B. Effect of the Reverse Offer of Judgment:**

If accepted by the BCC, the case would settle at \$99,900.00 for land, severance damage, business damage and statutory interest. Also, the attorney's fee reimbursement would be set at 33% of the benefit, a monetary sum of \$18,570.75. The expert cost reimbursement would not be resolved. Costs would be high due to the numerous experts employed in a business damage case and the statutory requirement of the business damage report and offer by the owner. The cost claim is probably already in excess of \$50,000.00. Thus, an acceptance costs the county perhaps \$170,000.00.

If not accepted by the BCC, then the case proceeds to mediation for settlement or trial. A rejection by the BCC affects the calculation of the attorney's fees. If rejected, the reimbursement of attorney's fees would not be the percentage calculation. A settlement or jury trial exceeding \$99,900.00 would result in attorney's fees being calculated based on the number of hours expended,

## VI COUNTY OFFER OF JUDGMENT AND ITS EFFECTS

### A. County Offer of Judgment:

If the BCC rejects the owner's Reverse Offer of Judgment, then County staff recommends the issuance of a County Offer of Judgment at an amount not to exceed \$63,000.00 for all land, severance damages, business damage, and statutory interest exclusive of all attorney's fees and cost reimbursements.

### B. Effect of the County Offer of Judgment:

If the owner accepts the County's Offer of Judgment, then the case settles for \$63,000.00 as to all land value, severance damage, business damage, and statutory interest. Also, the attorney's fee reimbursement would be set at \$6,393.75. Cost reimbursements would not be determined.

If the owner rejects the County's Offer of Judgment, then the case proceeds to mediated settlement or trial. If a mediated settlement or jury verdict is less than \$63,000.00, then expert costs are cut off after the date of the owner's rejection of the County's Offer of Judgment. A best result for the County at trial would be a verdict in the \$30,000.00 range, producing no statutory interest or percentage attorneys fees, costs would still be reimbursed.

## VII ANALYSIS

The potential range between an owner jury verdict at \$250,000.00 plus attorneys fees and costs and a County jury verdict of about \$30,000.00 is great. including potential attorney fees and costs an owner jury verdict costs the County perhaps \$400,000.00 while a County jury verdict costs the County about \$80,000.00 when costs are included. Acceptance of the owner's offer of judgment at \$99,900.00 produces a total result costing the County about \$170,000.00.

Staff recommends rejection of the owner's reverse offer of judgment for two reasons. First, acceptance of reverse offers should occur when acceptance makes sense from a total cost analysis. Here, the owners have fully expended all possible expert costs to gin up inflated business damage claims and then produce a cure and a settlement offer at a maximum offer of \$99,900.00. If accepted the BCC raises the bar for future settlements. Second, the County's Engineering Division has produced an excellent design plan that improves access to the business, improves traffic flow past the business, and has presented a cure plan that enhances the business display areas. The County has already gone the extra mile. The County is in a good trial position.

## VIII RECOMMENDATION

This office recommends that the BCC reject the owner's Reverse Offer of Judgment and authorize the issuance of a County Offer of Judgment not to exceed \$63,000.00.

HMB\dre  
Attachment

Exhibit A - Sketch

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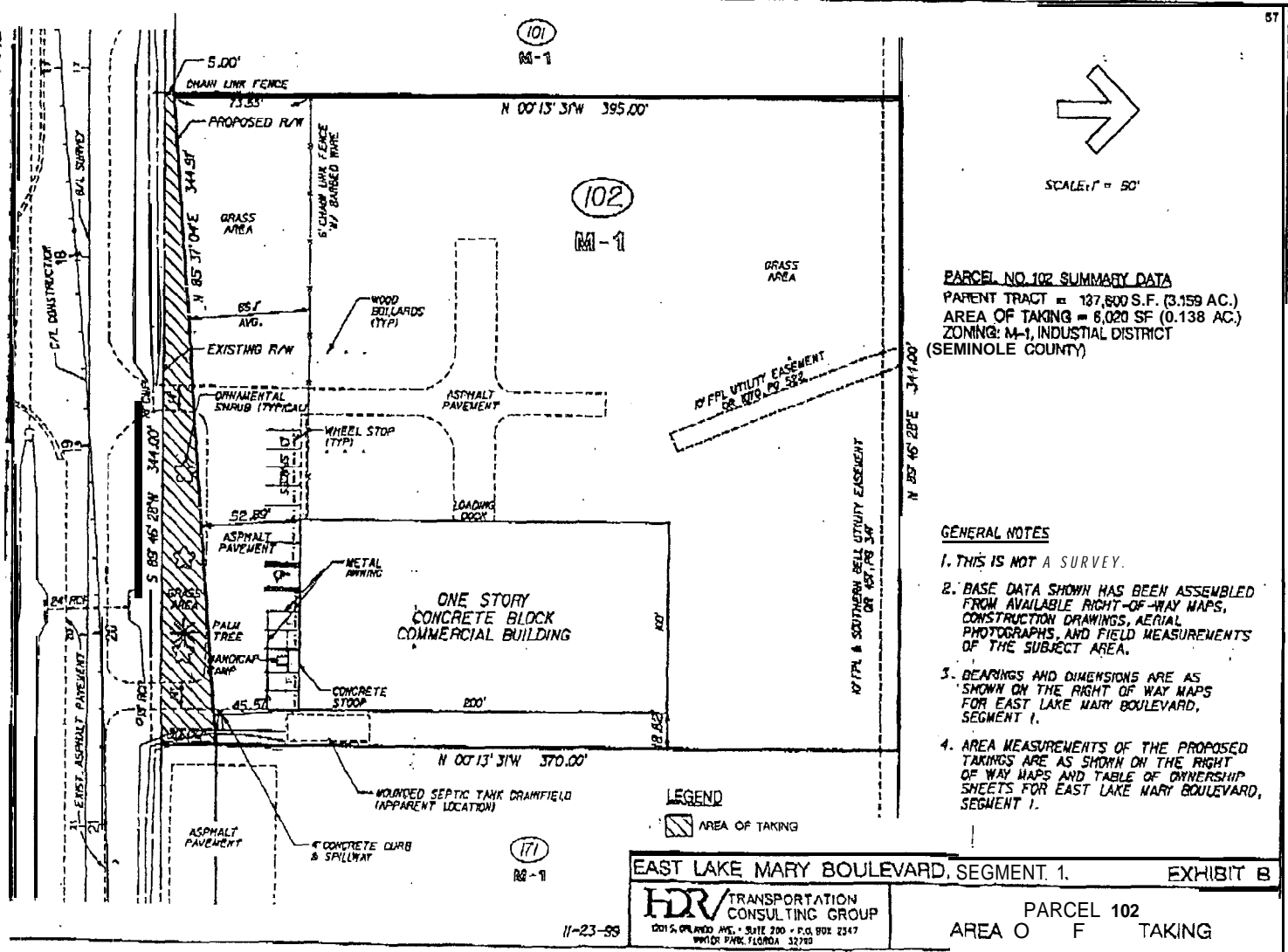


EXHIBIT A