

02



COUNTY ATTORNEY'S OFFICE  
MEMORANDUM

TO: Board of County Commissioners

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

FROM: Herbert S. Zischkau III, Assistant County Attorney *[Signature]*  
Ext. 5736

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

DATE: November 19, 2003

SUBJECT: Settlement Authorization  
Airport Boulevard Phase III  
Parcel No. 152  
*Seminole County v. Cubberly, et al.*  
Case No.: 03-CA-158-13-W  
Owner: David E. Lee

---

This memorandum requests authorization by the Board of County Commissioners (BCC) to make an Offer of Judgment for Parcel No. 152 on the Airport Boulevard Phase III road improvement project (the "Project"). The recommended settlement to be offered would be at the total sum of up to \$84,000.00, exclusive of attorney's fees and costs.

**I PROPERTY**

**A. Location Data**

The property that was acquired in this eminent domain proceeding lies on the northeast corner of Bevier Road and St. Johns Parkway (f/k/a Jewett Lane) in Seminole County, Florida. See, Location Map and Sketch attached as Exhibits A and B, respectively.

B. Street Address

There is no street address. The property is now vacant because Seminole County demolished the former residence after the Court entered an Order of Taking and the County acquired ownership of the property.

**II AUTHORITY TO ACQUIRE**

The BCC adopted the First Supplemental and First Amended Resolution No. 2001-R-108 on June 26, 2001, for the Airport Boulevard Phase III road improvement project, authorizing the acquisition of the above-referenced property, and finding that the construction of the Airport Boulevard Phase III 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 fee simple acquisition consisted of the whole of the property, 15,876 square feet. The acquisition is a rectangular corner parcel. There is no remainder.

**IV APPRAISED VALUES**

The County's appraisal report was prepared by Diversified Property Specialists, Inc. and reported a value, including both land and improvements acquired, of \$74,000.00.

The property owner's appraisal found a value of \$96,000.00 based upon a potential non-residential use of the land as vacant.

**V BINDING OFFER/NEGOTIATIONS**

Before litigation, the County extended a binding written offer to the property owner in the amount of \$71,500.00. The owner made an offer of judgment demanding \$95,350.00, which the responsible Assistant County Attorney declined.

**VI SETTLEMENT ANALYSIS/COST AVOIDANCE**

A. Purpose of the Offer of Judgment

It is possible that the owner will decline an offer of judgment in the requested amount. However, it is important for the County to make the proposed offer of judgment in order to obtain the benefits of *Section 73.032(5), Florida Statutes*, to limit an owner's costs that he may recover from the County.

If this case is not settled, the jury will likely see both sides' appraisals. Since it would be up to the jury to determine the County's final liability to the owner for the value

of this property, it is possible that the jury would find damages in excess of the value given in the County's updated appraisal.

For the County's proposed offer of judgment to be effective in promoting a settlement before trial, the offer of judgment must be higher than a possible low jury verdict. The maximum figure of \$84,000.00, which is above County-appraised value, is therefore proposed for BCC approval because a jury verdict could come in between the County's lower value and the higher value normally expected in an owner's appraisal. With pre-judgment interest excluded, the court's award must come out to less than the offer of judgment to obtain its desired effect under *Section 73.032(5), Florida Statutes*. An offer of judgment above appraised value for this tactical purpose is not excessive.

B. Result if an Offer is Accepted.

If any owner accepts an offer of judgment, the County will fix its liability for the statutory attorney's fee at thirty-three percent of the difference between the accepted offer of judgment and the County's prior first written offer. For example, this attorney's fee would be thirty-three percent (33%) of the difference between an \$84,000.00 offer of judgment and the County's first offer of \$71,500.00, as the "benefit" to the owner is defined in *Section 73.092(1)(a), Florida Statutes*. The amount of the rejected first offer, \$71,500.00, set in stone the statutory benchmark for Seminole County's liability, so that by law, the benefit to the owner of his attorney's services is what he recovers for David E. Lee in excess of \$71,500.00.

In short, the lower the amount of any settlement or jury verdict, the lower the legal fee which will be awarded to the owner's attorneys. Likewise, the higher the first offer made by the County, the lower the legal fee for which the County becomes liable. Therefore, the County also protects the public purse from excessive liability for attorney's fees by making both a reasonable first written offer and then a reasonable offer of judgment which, if accepted, will cap the fee these owners' attorneys will receive.

C. Result if the Offer is Rejected.

On the other hand, if an owner rejects the County's offer of judgment, *Section 73.032(5), Florida Statutes*, provides that:

"If ... the judgment obtained by the defendant, exclusive of any interest accumulated after the offer of judgment was initially made, is equal to or less than such offer, then the court shall not award any costs incurred by the defendant after the date the offer of judgment was rejected." (Emphasis added.)

It is therefore necessary to make an offer of judgment high enough to survive a possible jury verdict in excess of the County's appraised value, but make the offer soon enough to put an intransigent owner at risk of not recovering his continuing costs for expert witnesses, the major expenditure in these proceedings besides legal fees.

## **VI RECOMMENDATION**

County staff recommends that the BCC approve making such an Offer of Judgment in an amount of up to \$84,000.00, exclusive of attorney's fees and costs.

HZ/dre

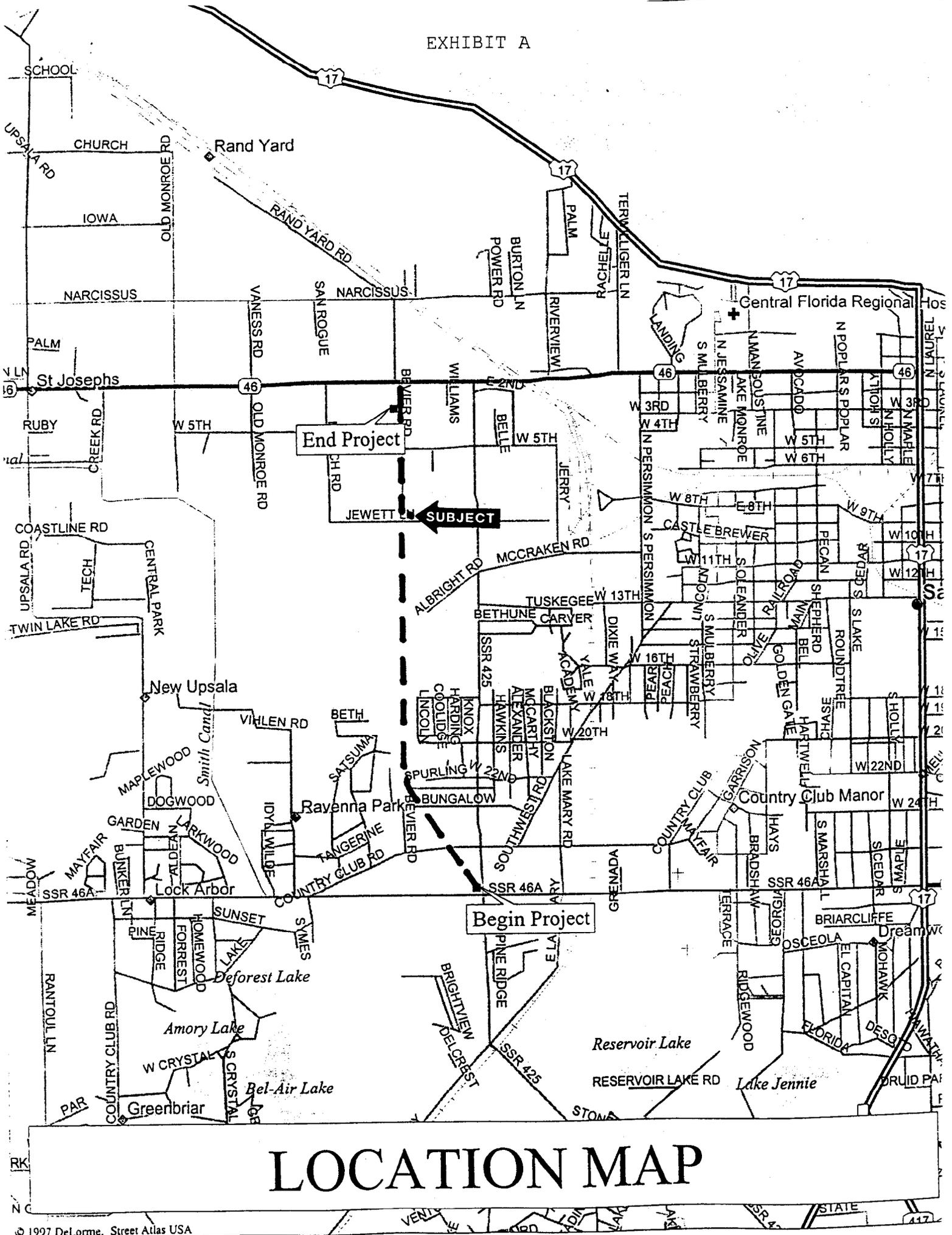
Attachments:

Exhibit A – Location Map

Exhibit B - Sketch

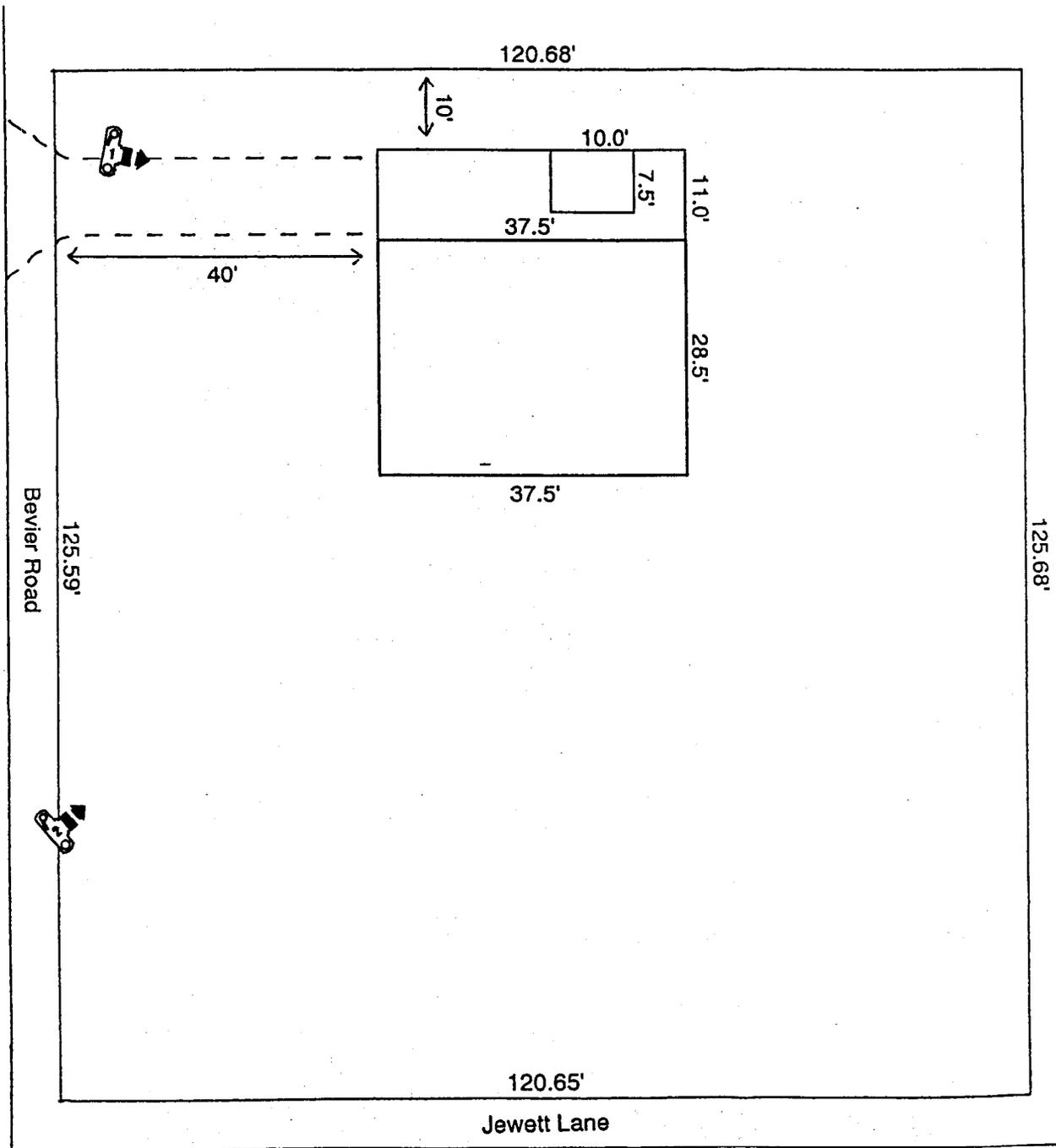
P:\Users\CAHZ01\BCC\BCC AIR III 0031119 OOJ LEE.doc

EXHIBIT A



# LOCATION MAP

EXHIBIT B



Sketch Not To Scale

Parent Tract:	15,876 sf	0.364 ac
Part Taken:	<u>15,876 sf</u>	<u>0.364 ac</u>
Remainder:	0 sf	0 ac

PARCEL SKETCH