



COUNTY ATTORNEY'S OFFICE
MEMORANDUM

TO: Board of County Commissioners

THROUGH: Matthew G. Minter, Deputy County Attorney *[Signature]*

FROM: David G. Shields, Assistant County Attorney
Ext. 5736 *[Signature]*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
David Nichols, Principal Engineer/Engineering Division *[Signature]* 11-17-06

DATE: November 16, 2006

RE: Authorization to issue Offer of Judgment
East Lake Mary Boulevard Phase IIB
Parcel Nos. 203A/203B/803
Seminole County v. Nordman, et al.
Case No. 04-CA-223-13-W

This Memorandum requests authorization by the Board of County Commissioners (BCC) to issue an Offer of Judgment on Parcel Nos. 203A/203B/803 at \$360,000.00.

I. THE PROPERTY:

A. Location Data

The subject parcels are located along the south side of Kentucky Avenue (a 60 foot unpaved road) in unincorporated Seminole County, Florida. A location map is attached as Exhibit A.

B. Property Address

The property is vacant and, therefore does not have an assigned address. A Parcel sketch is attached as Exhibit B.

II AUTHORITY TO ACQUIRE.

The BCC adopted Resolution No. 2003-R-47 on February 11, 2003, and Resolution No. 2003-R-216 on December 9, 2003, authorizing the acquisition of Parcel Nos. 203A/203B/803. The East Lake Mary Boulevard Phase IIB road improvement project was found to be necessary and serving a public purpose and in the best interests of the citizens of Seminole County. The Order of Take occurred on January 27, 2004 for Parcel No. 803 and May 24, 2004, for Parcel Nos. 203A/203B. Seminole County acquired the right to permanently use Parcel No. 803 on February 5, 2004 and obtained title to Parcel Nos. 203A/203B on June 2, 2004, respectively, the dates of deposit of the good faith amount for the Parcels. The date of deposit for all parcels as agreed to by the parties is June 2, 2004.

III ACQUISITIONS AND REMAINDER

The acquisition of Parcel Nos. 203A/203B totals 6.2257 acres in fee simple from a parent tract of 53.69 acres with a remainder of 47.46 acres. Parcel No. 803 is a permanent drainage easement that totals 14,587 square feet.

IV APPRAISED VALUES

The County's original report dated December 5, 2003, was prepared by The Spivey Group, Inc., and reported full compensation to be \$152,000.00 allocated \$145,500.00 for Parcel Nos. 203A/203B and \$6,500.00 for Parcel No. 803. An additional report updated to the date of deposit opines the value to be \$301,700.00 for Parcel Nos. 203A/203B and \$11,300.00 for Parcel No. 803.

On May 10, 2006, the County received the owners' appraisal report which opines full compensation for all parcels at \$760,700.00.

V BINDING OFFER/STATUS OF THE CASE

The County's initial written offer was \$175,000.00.

The trial related to this case is set for the one (1) week trial period beginning March 5, 2007.

VI ANALYSIS

An offer of judgment is a procedural device that is intended to impose a monetary risk on a party which refuses to accept a reasonable settlement offer. An offer of judgment, when made and accepted, settles the owner's compensation, damages, and statutory attorney's fees; however, it leaves the costs outstanding. Costs would then either be settled or determined by the Court.

If an owner rejects an offer of judgment, it has no impact on settlement or statutory attorney's fees. However, it impacts the property owner's expert costs in two (2) ways:

(1) Expert costs are not reimbursed for time expended after the date of the rejection of the offer of judgment if a verdict or subsequent settlement is less than the offer of judgment amount, and

(2) The owner's experts have their compensation for trial preparation at risk; as a result, the experts may slack off on preparation and be more motivated to control their expenditure of time in trial preparation.

If an offer of judgment is not made, then the owner's experts may be encouraged to run up a tremendous number of hours and prepare hard for trial because reimbursement of costs by the County is limited only by what the court deems reasonable or unreasonable.

VII RECOMMENDATION

County staff recommends that the BCC authorize the issuance of an Offer of Judgment at the amount to be determined by the County Attorney's Office, not to exceed \$360,000.00. This amount is reasonable, given the respective appraisals of the County and the owners.

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Two (2) Attachments:

Exhibit A - Location Map

Exhibit B - Sketch

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EXHIBIT A



