



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Robert McMillan, County Attorney

FROM: Al Schwarz, Assistant County Attorney *ALS*
Ext. 5736

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
David Nichols, Principal Engineer/Engineering Division *DN/psh*

DATE: December 6, 2005

SUBJECT: Offer of Judgment Authorization
Lake Drive (Seminola Blvd. to Tuskawilla Road) road improvement project
Parcel Nos. 121/721; Suero
Seminole County v. Suero, et al.
Case No. 04-CA-2045-13-G

This Memorandum requests authorization by the Board of County Commissioners (BCC) to make an Offer of Judgment on Parcel Nos. 121/721 in an amount as determined by the County Attorney's Office, not to exceed \$70,000.00.

I PROPERTY

A. Location Data

Parcel Nos. 121/721 are located on northeast side of Lake Drive, approximately .1 mile south of Center Drive, Seminole County, Florida. The ownership tract consists of 5.134 acres. A location map is attached as Exhibit A.

B. Property Address

The property address is 4550 East Lake Drive, Winter Springs, Florida.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolutions No. 2002-R-70 and 2004-R-75 on April 23, 2002 and April 13, 2004, respectively, authorizing the acquisition of Parcel Nos. 121/721. The Lake Drive (from Seminola Boulevard to Tuskawilla Road) 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 December 8, 2004, with title vesting in Seminole County on December 17, 2004, the date of the good faith deposit in the amount of \$33,800.00.

III ACQUISITIONS AND REMAINDER

The acquisition totals 1,179 square feet in fee simple with a 331 square foot temporary construction easement (TCE) to construct a driveway that will provide an acceptable transition from the existing driveway to the realigned Lake Drive. A parcel sketch is attached as Exhibit B.

IV APPRAISED VALUES

The County's original report dated April 20, 2004, was prepared by Clayton, Roper, and Marshall, and reported full compensation to be \$32,300.00. The updated appraisal report dated November 15, 2004, reported full compensation at \$33,800.00. An additional report updated to the dated of deposit, dated, November 18, 2005, opines the value to be \$34,750.00.

On December 6, 2005, the County received the owner's appraisal report which opines full compensation of \$200,000.00 and \$200.00 for Parcel Nos. 121 and 721 respectively. Previous to that, the owners submitted two engineering reports, with the most recent dated May 11, 2005, demonstrating cost to cure ranging from \$38,468.00 to \$145,977.00 and replacement costs of the items in the amount of \$30,822.00.

V BINDING OFFER/STATUS OF THE CASE

The County's initial written offer was \$55,000.00.

A mediation conference will occur December 15, 2005. The trial related to this case is set for the January 30, 2006 one (1) week trial docket.

VI ANALYSIS

The main issues in this case are the difference in the cost to cure, improvements and damages. As to Parcel No. 121, the County prepared an appraisal report that provides for a total value of \$33,600.00, allocating \$4,200.00 for the land, \$15,500.00 for the cost to cure and \$13,900.00 for improvements. As to Parcel No. 721, the County's appraiser has opined a value of \$1,150.00, of which \$500.00 is allocated to the land and \$650.00 is allocated to the improvements. As mentioned above, the

exceed of \$70,000.00 acknowledges the additional risk and costs of litigation without giving up too much additional ground from the pre-mediation offer in a case.

The Offer of Judgment when made and accepted settles the case and statutory attorney's fees; however, it leaves the costs outstanding. If rejected, the Offer of Judgment has no impact on settlement or statutory attorney's fees. However, it impacts expert costs in two (2) ways:

(1) Expert costs are not reimbursed for time expended after rejection of the Offer of Judgment if a verdict or subsequent settlement is less than the Offer of Judgment amount, and most importantly,

(2) The owners' experts have their compensation for trial preparation at risk; as a result, the experts slack off on preparation and control their expenditure of time in trial preparation.

If an Offer of Judgment is not made, then the owner's experts are encouraged to run up a tremendous number of hours and prepare hard for trial because reimbursement of costs by the County is assured.

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 \$70,000.00.

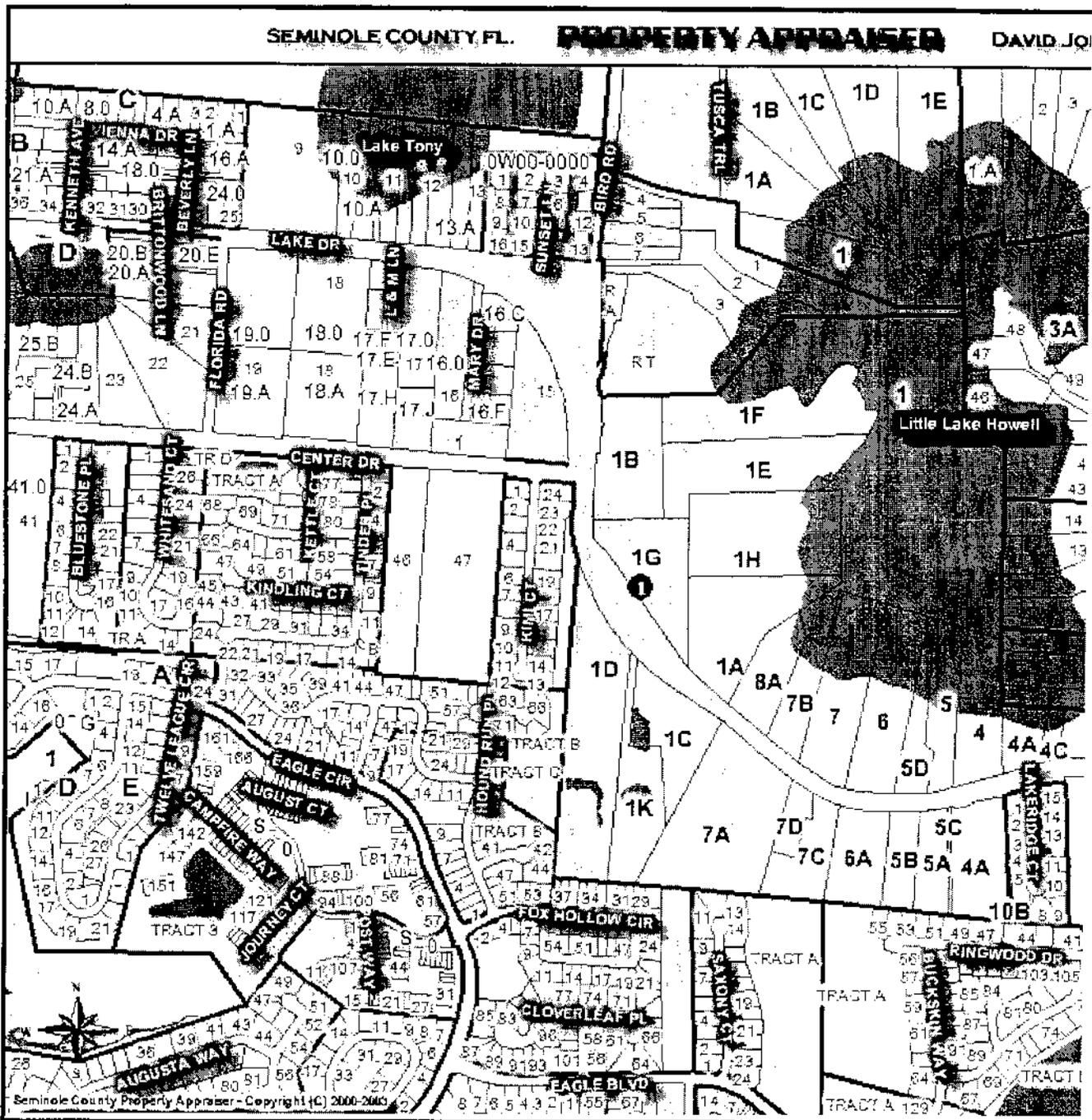
AHS/dre

Attachments:

Exhibit A - Location Map

Exhibit B - Sketch

P:\Users\cedge\My Documents\MEM\AGENDA ITEM LD SUERO 121 721 OOJ.doc



Rec	Parcel	Owner	Owner Addr	City	State	Zip
1	142130300001G0000	SUERO ALEX G	4550 E LAKE DR	WINTER SPRINGS	FL	32708

EXHIBIT A

ZONING: STANFORD
 PROVIDED
 ATTACHED TO FORM 1
 100' W. PROPERTY LINE
 5' W. OF E.C.
 10' W. OF PROPERTY LINE
 15' W. OF E.C.
 15' W. OF E.C.

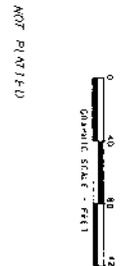
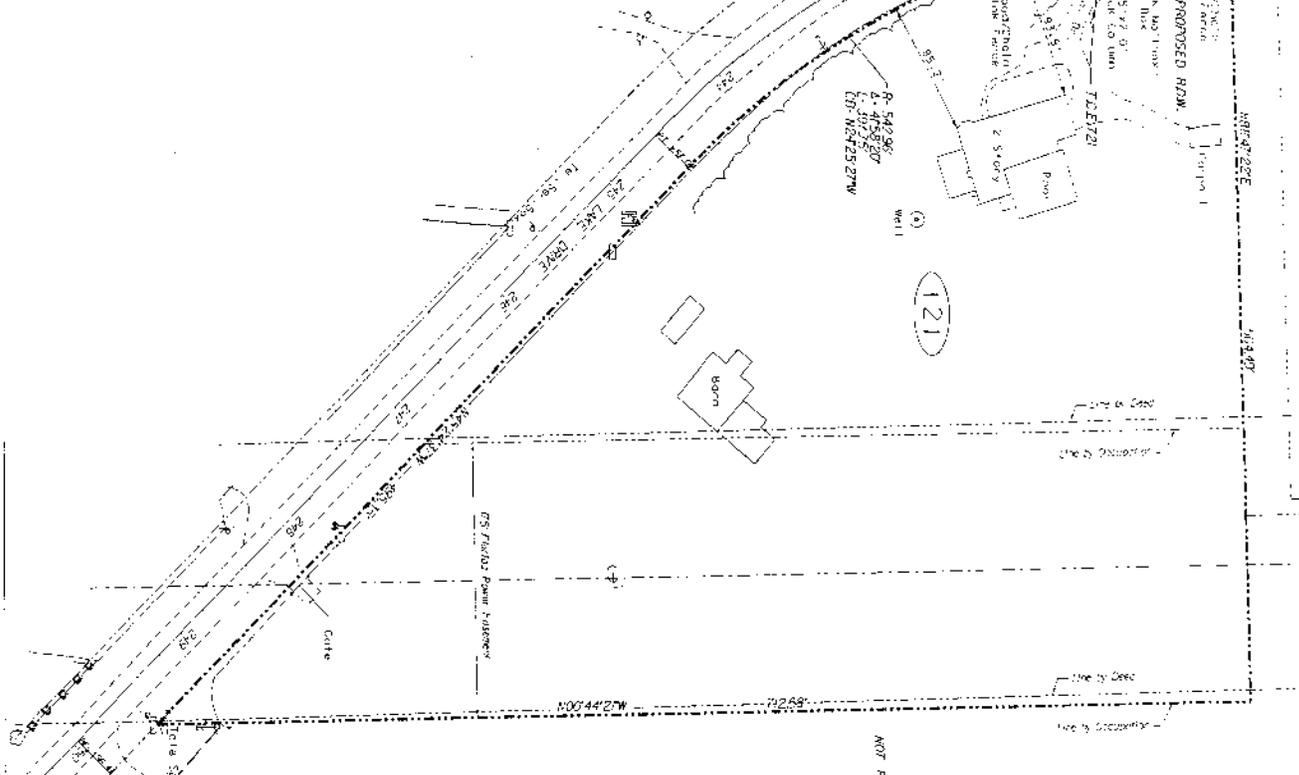
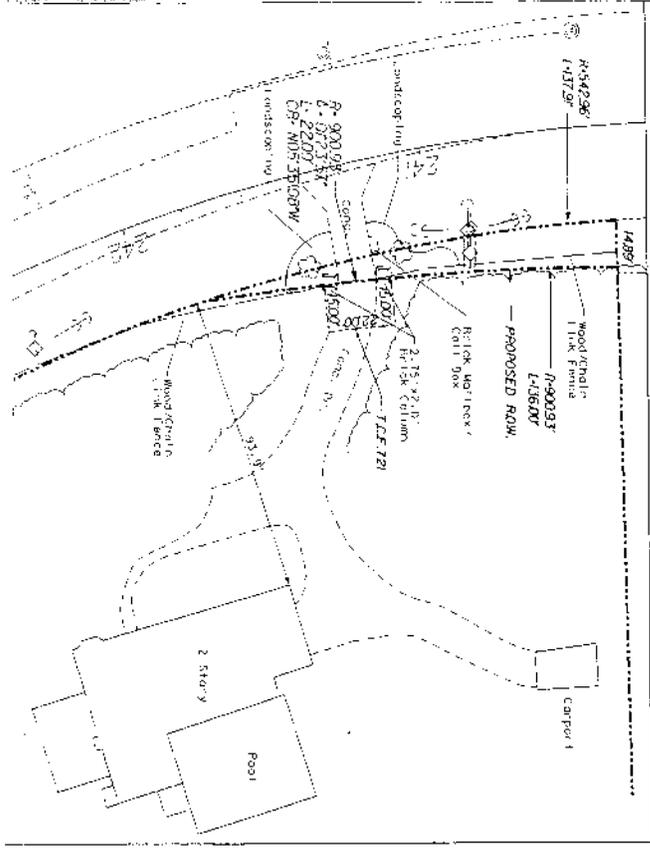


EXHIBIT B

SHEET 2
 OF 4
LOCHRANE
 ENGINEERS • SURVEYORS
 10000 E. 120th Street, Suite 100, Overland Park, KS 66204
 TEL: 913.666.1234 FAX: 913.666.1235

PARCEL 121
 T.C.E. 721
 PARENT TRACT
 WITH TAKING

EXHIBIT B
 FOR
 SEMINOLE COUNTY
 SEMINOLE COUNTY
 11/20/02

PROJECT: EPC44
 DATE: MAY 2002
 SCALE: AS SHOWN
 PREPARED BY: E.C. CHECKED: J.C.
 SUPERVISOR: A.P. APPROVED: E.W.