

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Brinker property

DEPARTMENT: County Attorney's Office

DIVISION: Property Acquisition

AUTHORIZED BY: Lola Pfeil

CONTACT: Sharon Sharrer

EXT: 7257

MOTION/RECOMMENDATION:

Approve and execute purchase agreement relating to Parcel Numbers 123/823 of the road improvement project for Chapman Road, for \$35,200.00, for full settlement of all claims for compensation from which Seminole County might be obligated to pay relating to this parcel.

District 1 Bob Dallari

Robert A. McMillan

BACKGROUND:

see attached

STAFF RECOMMENDATION:

Staff recommends that the Board approve and execute the purchase agreement relating to Parcel Numbers 123/823 of the road improvement project for Chapman Road, for \$35,200.00, for full settlement of all claims for compensation from which Seminole County might be obligated to pay relating to this parcel.

ATTACHMENTS:

1. Brinker property

Additionally Reviewed By: No additional reviews



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Matthew G. Minter, Deputy County Attorney *MGM*

FROM: Neil Newton, Major Project Acquisition Coordinator *W*

CONCUR: Antoine Khoury, P.E./Assistant County Engineer *AK 9-22-09*

DATE: September 21, 2009

SUBJECT: Purchase Agreement Authorization
Owner: Bonita G. Brinker
Parcel Nos.: 123/823
Chapman Road

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel Nos. 123/823. The parcel is required for the Chapman Road improvement project. The purchase price is \$35,200.00, for full settlement of all claims for compensation from which Seminole County might be obligated to pay relating to this parcel.

I THE PROPERTY

A. Location Data

The subject property is located on the north side of Chapman Road, west of Westminster Terrace within Seminole County, Florida.

1. Purchase Agreement (Exhibit 1)
2. Location Map (Exhibit 2);

B. Address

850 W. Chapman Road
Oviedo, Florida 32765

C. Description

The parent tract is a 13.231 acre site, irregular in shape. The property is improved by a rock/gravel driveway.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No.: 2008-R-140 on June 10, 2008, authorizing the acquisition of Parcel Nos. 123/823, and finding that the improvements are necessary and serve a County and public purpose and are in the best interests of the citizens of Seminole County.

III ACQUISITION/REMAINDER

The fee taking for the roadway project contains 1,400 square feet, identified as Parcel 123. Improvements in the fee taking include a rock/gravel driveway. The perpetual drainage easement, identified as Parcel 823, contains 4,000 square feet.

IV APPRAISED VALUE

The County's appraised value amount is \$18,500.00. Clayton, Roper & Marshall, Inc. prepared the County's appraisal and the County's review appraiser, Mark Sawyer, MAI with HDR Engineering, Inc., approved the report.

V BINDING OFFER/NEGOTIATIONS

On June 9, 2009, the BCC authorized a binding written offer at \$24,000.00. Thereafter, County staff, through its acquisition consultant, negotiated this proposed purchase agreement settlement with the owner to purchase the needed property for \$35,200.00.

Settlement of this matter by acceptance of the property owner's proposal will reduce the potential expenses and compensation that the County may incur if the offer is rejected and the County elects to implement condemnation to acquire the property.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

This proposed settlement amount, although \$11,200.00 more than the County's binding written offer amount, is reasonable under the circumstances inherent in the condemnation process. The owner is represented by an attorney and the negotiated amount is inclusive of all fees and costs. If this property proceeds to condemnation, litigation costs and appraisal and expert costs will have to be paid by the County. These costs would easily exceed the difference in additional settlement funds proposed to be paid.

The cooperative purchase of the property through this proposed settlement is in the best interests of the citizens of Seminole County.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$35,200.00, for full settlement of all claims for compensation from which Seminole County might be obligated to pay relating to this parcel.

NN/lpk

Attachments:

- Exhibit 1 - Purchase Agreement
- Exhibit 2 - Location Map

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Exhibit 1

Chapman Road
Parcel Nos 123/823
Bonita Brinker

PURCHASE AGREEMENT **FEE SIMPLE / PERPETUAL DRAINAGE EASEMENT**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS EASEMENT is made and entered into this ____ day of _____, 2009, by and between BONITA G. BRINKER, whose address is 850 West Chapman Road, Oviedo, Florida 32765, hereinafter referred to as "OWNER," and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY requires the hereinafter described property for construction and maintenance of an authorized road project in Seminole County;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained OWNER hereby agrees to sell and convey, and COUNTY hereby agrees to purchase the following property upon the following terms and conditions:

I. LEGAL DESCRIPTIONS **PARCEL NO. 123** **FEE SIMPLE**

CHAPMAN ROAD

A PORTION OF THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 31 EAST, SEMINOLE COUNTY, FLORIDA.

BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 21; THENCE SOUTH 00°04'22" WEST ALONG THE WEST LINE OF THE EAST 1/2 OF SAID SECTION 21, A DISTANCE OF 5309.36 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SEMINOLE COUNTY ROAD, CHAPMAN ROAD, PER DEED BOOK 81, PAGE 137, PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA, AND THE POINT OF BEGINNING; THENCE NORTH 00°04'22" EAST ALONG SAID WEST LINE, A DISTANCE OF 35.00 FEET; THENCE SOUTH 89°44'12" EAST, A DISTANCE OF 40.00 FEET TO A POINT ON THE WEST LINE OF LOT A OF HORSESHOE FARMS AS RECORDED IN PLAT BOOK 17, PAGES 77; THENCE SOUTH 00°04'22" WEST ALONG THE WEST LINE AND A PROJECTION OF THE WEST LINE OF SAID LOT A, A DISTANCE OF 35.00 FEET TO A POINT ON SAID NORTH RIGHT-OF-WAY LINE;

THENCE NORTH 89°44'12" WEST, A DISTANCE OF 40.00 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF SAID SECTION 21 AND THE POINT OF BEGINNING.

CONTAINING 1,400 SQUARE FEET OR 0.032 ACRES, MORE OR LESS.

AND

**PARCEL NO. 823
PERPETUAL DRAINAGE EASEMENT**

CHAPMAN ROAD

A PORTION OF THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 31 EAST, SEMINOLE COUNTY, FLORIDA.

BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 21; THENCE SOUTH 00°04'22" WEST ALONG THE WEST LINE OF THE EAST 1/2 OF SAID SECTION 21, A DISTANCE OF 5309.36 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SEMINOLE COUNTY ROAD, CHAPMAN ROAD, PER DEED BOOK 81, PAGE 137, PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA; THENCE SOUTH 89°44'12" EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 40.00 FEET TO A POINT ON THE SOUTHERLY PROJECTION OF THE WEST LINE OF LOT A OF HORSESHOE FARMS, AS RECORDED IN PLAT BOOK 17, PAGES 77; HAVING A BEARING OF SOUTH 00°04'22" WEST; THENCE RUN NORTH 00°04'22" EAST ALONG SAID PROJECTED WEST LINE OF LOT A, A DISTANCE OF 35.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°44'12" WEST, A DISTANCE OF 40.00 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF SAID SECTION 21; THENCE NORTH 00°04'22" EAST ALONG THE WEST LINE OF THE EAST 1/2 OF SAID SECTION 21, A DISTANCE OF 100.00 FEET; THENCE SOUTH 89°44'12" EAST, A DISTANCE OF 40.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT A; THENCE SOUTH 00°04'22" WEST ALONG THE WEST LINE OF SAID LOT A, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,000 SQUARE FEET OR 0.092 ACRES, MORE OR LESS.

Parcel I.D. Number: 21-21-31-300-014A-0000

II. PURCHASE PRICE

(a) OWNER agrees to sell and convey the above-described property by Warranty Deed on Parcel No. 123, free of liens and encumbrances, and by Perpetual Drainage Easement on Parcel No. 823 unto COUNTY for the sum of THIRTY-FIVE THOUSAND AND TWO HUNDRED NO/100 DOLLARS (\$35,200.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever. OWNER agrees to execute a Perpetual Drainage Easement. See Exhibit A, attached, Perpetual Drainage Easement.

(b) COUNTY shall be responsible for the following closing costs: recording fees for Warranty Deed and Title Insurance Policy issued to the COUNTY by a title insurance company of the COUNTY's choice.

(c) OWNER shall be responsible for OWNER's own attorney's fees, cost to prepare and all expenses to record instruments necessary to provide title unto COUNTY, free and clear of all liens and encumbrances, and the OWNER's share of the pro-rata property taxes outstanding, up to and including the date of closing. The before mentioned closing costs and pro-rata real estate taxes shall be withheld by the COUNTY's closing agent from the proceeds of this sale and paid to the proper authority on behalf of the OWNER.

(d) OWNER covenants that there are no real estate commissions due any licensed real estate broker and further agrees to defend against and pay any valid claims made in regard to this purchase relating to covenants made herein by the OWNER.

III. CONDITIONS

(a) COUNTY shall pay to the Trust Account of OWNER's attorney, Lowndes, Drosdick, Kantor & Reed, P.A., the sum as described in Item II., above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the designated closing agent. OWNER's attorney shall be responsible for the proper disbursement of those funds. The OWNER agrees to close within seven (7) days of notice by the COUNTY or the COUNTY's closing agent that a closing is ready to occur.

(b) COUNTY shall pay to the OWNER the sum as described in Item II. above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the COUNTY's designated closing agent. The OWNER agrees to close within seven (7) days of notice by the COUNTY's closing agent that a closing is ready to occur.

(c) OWNER agrees to vacate and surrender possession of the property upon the date of delivery of the instruments and closing on this purchase. COUNTY may, but is not obligated to, extend possession of the property by OWNER; provided, however, that such approval will be evidenced by a written document of equal dignity herewith.

During the period from the date of the execution of this Agreement by both parties and the closing, OWNER agrees to exercise diligent care in protecting the property from theft and vandalism. All windows, doors, bathroom fixtures, electrical outlets, heaters and other similar items included in the purchase price, as well as the land itself, shall be preserved in the normal conditions and turned over to the COUNTY by the OWNER, intact, if applicable.

(d) Any and all encroachments existing upon the property other than those improvements included in the purchase price are to be removed at the expense of the OWNER prior to closing.

(e) OWNER warrants that there are no facts known to OWNER materially affecting the value of the properties which are not readily observable by COUNTY or which have not been disclosed to COUNTY.

(f) The instrument(s) of conveyance to be utilized at closing shall, in addition to containing all other common law covenants through the use of a warranty deed, also include the covenant of further assurances.

(g) The OWNER shall fully comply with Section 286.23, Florida Statutes, to the extent that said statute is applicable.

(h) In the event that COUNTY subsequently abandons this project after execution of this Agreement, but before closing, this Agreement shall be null and void.

(i) In the event that difficulties arise as to clearing title sufficient to consummate a closing of this Purchase Agreement or difficulties occur in the issuance of a title insurance commitment which is acceptable to the COUNTY, this Agreement shall survive the filing of any eminent domain action by the COUNTY and shall serve as a joint stipulation regarding all valuation issues and fees and costs matters in any condemnation proceeding initiated by the COUNTY relating to the real property herein described. The OWNER agrees that, in accordance with any request made by the COUNTY, the OWNER shall execute any and all instruments, pleadings, documents and agreements upon litigation reflecting the full settlement as set forth herein. The OWNER agrees not to oppose the COUNTY's condemnation proceedings in any way. The OWNER, may however, assert OWNER's rights against other claimants in apportionment proceedings.

(j) The OWNER shall indemnify and save the COUNTY harmless from and against all liability, claims for damages, and suits for any injury to any person or persons, or damages to any property of any kind whatsoever arising out of or in any way connected with this Agreement or in any act or omission in any manner related to said Agreement.

(k) The COUNTY shall be solely responsible for all of COUNTY activities conducted on the property. OWNER shall not be considered an agent or employee of COUNTY for any reason whatsoever on account of the Agreement.

(I) The OWNER states that the OWNER has not engaged in any action that would create a conflict of interest in the performance of OWNER's obligations under this Agreement with the COUNTY, which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective name on the date first above written.

WITNESSES:

Alice Faye H. Sproul
SIGNATURE

ALICE FAYE H. SPROUL
PRINT NAME

Brendan Lynch
SIGNATURE

BRENDAN LYNCH
PRINT NAME

PROPERTY OWNER:

Bonita G. Brinker
BONITA G. BRINKER

ADDRESS: 850 West Chapman Road
Oviedo, Florida 32765

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
BOB DALLARI, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by the Board of
of County Commissioners at its _____,
2009, regular meeting.

County Attorney

NN/lpk
9/10/09
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Exhibit "A" – Perpetual Drainage Easement

PARCEL NO. 823
PERMANENT DRAINAGE EASEMENT
CHAPMAN ROAD
BONITA G. BRINKER

EXHIBIT A

THIS INSTRUMENT PREPARED BY:
NEIL NEWTON, MAJOR PROJECT ACQUISITION COORDINATOR
COUNTY ATTORNEY'S OFFICE
1101 E. FIRST STREET
SANFORD, FL 32771

PERPETUAL DRAINAGE EASEMENT

THIS PERMANENT DRAINAGE EASEMENT is made and entered into this _____ day of _____, 2009, by and between BONITA G. BRINKER, whose address is 850 West Chapman Road, Oviedo, Florida 32765, hereinafter referred to as the GRANTOR, and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the GRANTEE.

WITNESSETH:

FOR AND IN CONSIDERATION OF the sum of ONE AND NO/100 DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, GRANTOR does hereby grant and convey to the GRANTEE and its assigns an exclusive, perpetual and permanent easement and right-of-way for drainage and access purposes, with full authority to enter upon, excavate, construct and to maintain, as the GRANTEE and its assigns may deem necessary, a drainage system consisting of a drainage canal, pipes, ditches, detention, percolation or disposal areas or any combination thereof, together with appurtenant drainage structures, over, under, upon, across and through the following-described lands situate in the County of Seminole, State of Florida, to-wit:

**PARCEL NO. 823
PERPETUAL DRAINAGE EASEMENT**

CHAPMAN ROAD

A PORTION OF THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP 21 SOUTH, RANGE 31 EAST, SEMINOLE COUNTY, FLORIDA.

BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 21; THENCE SOUTH 00°04'22" WEST ALONG THE WEST LINE OF THE EAST 1/2 OF SAID SECTION 21, A DISTANCE OF 5309.36 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF SEMINOLE COUNTY ROAD, CHAPMAN ROAD, PER DEED BOOK 81, PAGE 137, PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA; THENCE SOUTH 89°44'12" EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 40.00 FEET TO A POINT ON THE SOUTHERLY PROJECTION OF THE WEST LINE OF LOT A OF HORSESHOE FARMS, AS RECORDED IN PLAT BOOK 17, PAGES 77; HAVING A BEARING OF SOUTH 00°04'22" WEST; THENCE

RUN NORTH 00°04'22" EAST ALONG SAID PROJECTED WEST LINE OF LOT A, A DISTANCE OF 35.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°44'12" WEST, A DISTANCE OF 40.00 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF SAID SECTION 21; THENCE NORTH 00°04'22" EAST ALONG THE WEST LINE OF THE EAST 1/2 OF SAID SECTION 21, A DISTANCE OF 100.00 FEET; THENCE SOUTH 89°44'12" EAST, A DISTANCE OF 40.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT A; THENCE SOUTH 00°04'22" WEST ALONG THE WEST LINE OF SAID LOT A, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,000 SQUARE FEET OR 0.092 ACRES, MORE OR LESS.

Parcel I.D. Number: 21-21-31-300-014A-0000

TO HAVE AND TO HOLD said easement and right-of-way unto said GRANTEE and its assigns forever.

THE GRANTEE hereby accepts this Perpetual Drainage Easement subject to the terms stated herein.

THE GRANTEE herein and its assigns shall have the right to clear, keep clear and remove from said right-of-way all trees, undergrowth, and other obstructions that may interfere with location, excavation, operation or maintenance of the drainage or any structures installed thereon by the GRANTEE and its assigns, and the GRANTOR, her successors and assigns agree not to build, construct or create, or permit others to build, construct or create any buildings or other structures on said right-of-way that may interfere with the excavation, operation or maintenance of the drainage or any structures installed thereon.

IN CARRYING OUT the maintenance activity specified in this Perpetual Drainage Maintenance Easement, GRANTEE shall exercise reasonable care not to impair the stability or lateral support of GRANTOR's driveway located on the above described maintenance easement area. If GRANTEE damages the GRANTOR's driveway located adjacent to the above described easement area during the course of or due to GRANTEE's maintenance activity in this easement area, then GRANTEE shall restore the driveway to an undamaged condition. GRANTOR reserves the rights of ingress, egress and utilities to service GRANTOR's property.

GRANTOR does hereby covenant with the GRANTEE, that she is lawfully seized and possessed of the real estate above described, that she has a good and lawful right to convey the said easement and that it is free from all encumbrances.

IN WITNESS WHEREOF, the GRANTORS have hereunto set their hands and seals, the day and year first above written.

WITNESSES:

PROPERTY OWNER:

SIGNATURE

BONITA G. BRINKER

PRINT NAME

ADDRESS: 850 West Chapman Road
Oviedo, Florida 32765

SIGNATURE

PRINT NAME

STATE OF _____)
COUNTY OF _____)

I HEREBY CERTIFY that, on this _____ day of _____, 2009, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Bonita G. Brinker, who is personally known to me or who has produced _____ as identification. She has acknowledged before me that she has executed the foregoing instrument.

Print Name _____
Notary Public in and for the County
and State Aforementioned
My commission expires: _____

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
BOB DALLARI, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by the Board
of County Commissioners at its _____,
2009, regular meeting.

County Attorney

NN/DGS/dre
9/16/09
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CHAPMAN ROAD

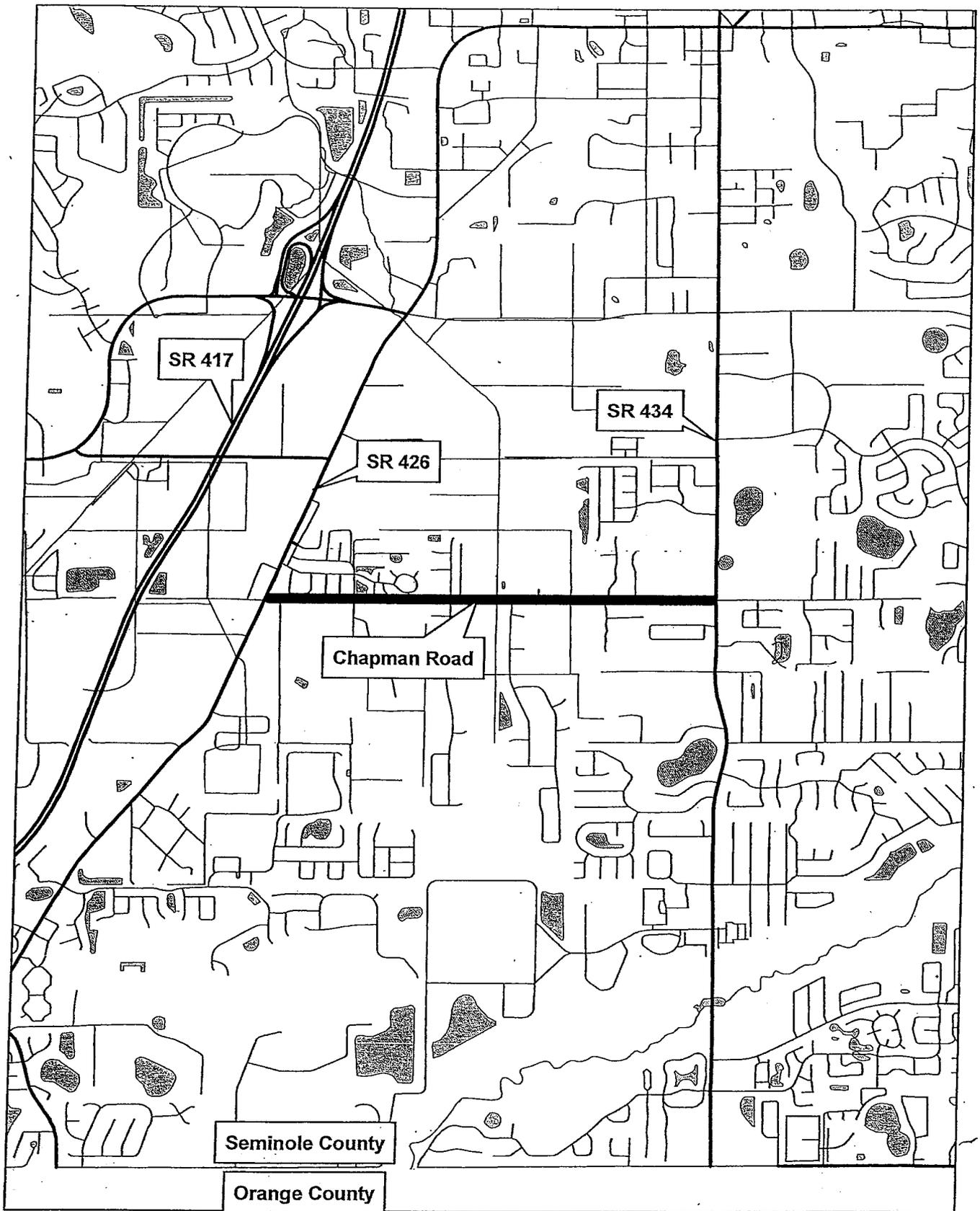


Exhibit 2