

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Lawlor property

DEPARTMENT: County Attorney's Office

DIVISION: Litigation

AUTHORIZED BY: Lola Pfeil

CONTACT: Sharon Sharrer

EXT:

MOTION/RECOMMENDATION:

A business damage claim has been served by Land Technologies, Inc., relating to Parcel I.D. Number: 16-19-30-5AB-0500-0030 on the Lockhart Smith Canal Project. The owner of the real property is John S. Lawlor who is sole officer, director, and shareholder of the corporation. Land Technologies, Inc., operates a nursery business on the site and has claimed \$138,363.00 in damages, exclusive of statutory interest, attorney's fees, and cost reimbursements. Request authorization to make a counteroffer based on the report of the County's business damage expert up to the amount of the claim filed. Judge Dickey.

District 5 Brenda Carey

BACKGROUND:

see attached

STAFF RECOMMENDATION:

Staff recommends the Board give authorization to make a counteroffer based on the report of the County's business damage expert up to the amount of the claim filed.

ATTACHMENTS:

1. Lawlor property

Additionally Reviewed By: No additional reviews



COUNTY ATTORNEY'S OFFICE
MEMORANDUM

TO: Board of County Commissioners

THROUGH: Matthew G. Minter, Deputy County Attorney

FROM: David G. Shields, Assistant County Attorney
Ext. 5736

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
Mark Flomerfelt, Stormwater Manager

DATE: November 14, 2007

SUBJECT: Authorization to Respond to Business Damage Claim
Lockhart Smith Canal Project
Parcel I.D. Number: 16-19-30-5AB-0500-0030
Seminole County v. Della Townsend, et al.
Case No. 2004-CA-2476-13-W
Owner: John S. Lawlor
Business Tenant: Land Technologies, Inc.

This Memorandum requests authorization by the Board of County Commissioners (BCC) to respond to the business damage claim of Land Technologies, Inc., ("LTI") on the Lockhart Smith Canal Project. LTI is a business tenant on Parcel I.D. Number 16-19-30-5AB-0500-0030, is wholly owned and controlled by Mr. Lawlor, and conducts a nursery business. By statute, the County is required to accept or reject the claim of submit a counteroffer within 120 days after receipt of the claim. LTI made its business damage claim of \$138,363.00 on August 20, 2007. The County's response is due by January 4, 2008.

I PROPERTY

A. Location Data

The Lawlor Parcel is located on the northeast corner of Orange Boulevard and North Oregon Street, in unincorporated Seminole County. A location map is attached as Exhibit A and a parcel sketch as Exhibit B.

B. Street Address

The street address is 4760 Orange Boulevard, Sanford, Florida 32771.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2003-R-98 on May 27, 2003 authorizing the acquisition of the Lawlor Parcel and finding that the Lockhart Smith Canal Project was necessary, served a public purpose and is in the best interest of the citizens of Seminole County. The order of take occurred on February 15, 2005, with title vesting in Seminole County on February 24, 2005, the date of the good faith deposit in the amount of \$35,500.00.

III ACQUISITIONS AND REMAINDER

This acquisition is for a permanent access, drainage and utility easement consisting of 10,449 square feet and encumbering the eastern portion of the parent tract. It begins on Orange Boulevard and traverses the entire property from the south to the north for a distance of about 336.41 feet. The easement is necessary for access and to widen and maintain the canal, primarily to mow and to otherwise keep the area clear of overgrowth. There is no fee taking of the property; therefore, the fee ownership of the parent tract remains 251,341 square feet.

IV APPRAISED VALUES

The County's original report dated August 15, 2003, was prepared by Diversified Property Specialists, Inc., and reported full compensation to be \$19,100.00. An additional report updated for the order of take hearing dated January 20, 2005, opines the value to be \$35,500.00 for Parcel I.D. Number 16-19-30-5AB-0500-0030. The appraisal report only appraises the land, improvements, and possible severance damages. The appraisal report does not encompass business damages. The County has retained a separate expert, a certified public accountant, to evaluate LTI's business damage claim.

The County received the owner's appraisal on August 7, 2007. The owner's appraisal was prepared by Calhoun, Dreggors & Associates, Inc., and opines the value to be \$83,400.00 as of March 1, 2005. This appraisal report does not encompass business damages.

V BUSINESS DAMAGES

At the time of the taking, LTI's business had been in operation since at least 2001, and therefore qualifies for business damages.

A. County's Business Damage Report

The County has retained a certified public accountant as its expert on the business damage claim. The expert is examining supporting documents provided by LTI with the claim. Therefore, the expert's analysis is not complete as of the date of this memorandum, but it is expected to be completed by the December 11, 2007 meeting of the BCC.

B. Tenant's Business Damage Report

The tenant's business damage report was prepared by Morgenstern Phifer & Messina and opined business damages at totaling \$138,363.00.

VII ATTORNEY FEES

Attorney fees for business damage claims are based on the difference between the final judgment or settlement on the claim and the amount of the County's initial counteroffer. If there is no timely counteroffer within 120 days of the offer, the counteroffer is deemed to be zero dollars. The same percentage attorney fee schedule is applied to this difference as is applied to the monetary benefits obtained as to land, improvements and damages. Therefore, it is important for the expert to review the claim and any and all supporting documents and recommend an appropriate response so as to minimize any claim for attorney fees.

VIII RATIONALE AND COST CONTROL

The Florida Statutes force the County to respond to the business damage claim quickly or risk significant additional exposure for attorney fees. This memorandum is intended only to address the statutory requirement for responding to the business damage claim and protect the County on the matter of attorney fees.

There is a limited budget at this time for additional acquisition costs associated with this project. If the County's settlement offer is accepted by the Nursery, a future budget amendment to allocate funding to cover the final settlement amount and County expert costs may be required.

VIII RECOMMENDATION

County staff recommends that the BCC authorize the County Attorney's Office to make a counteroffer in response to LTI's business damage claim in an amount to be based on the report of the County's business damage expert but not to exceed the business owner's demand. This amount will cover only business damages and is to be exclusive of statutory interest, statutory attorney's fees, cost reimbursements and any other compensation or damage which might be due LTI.

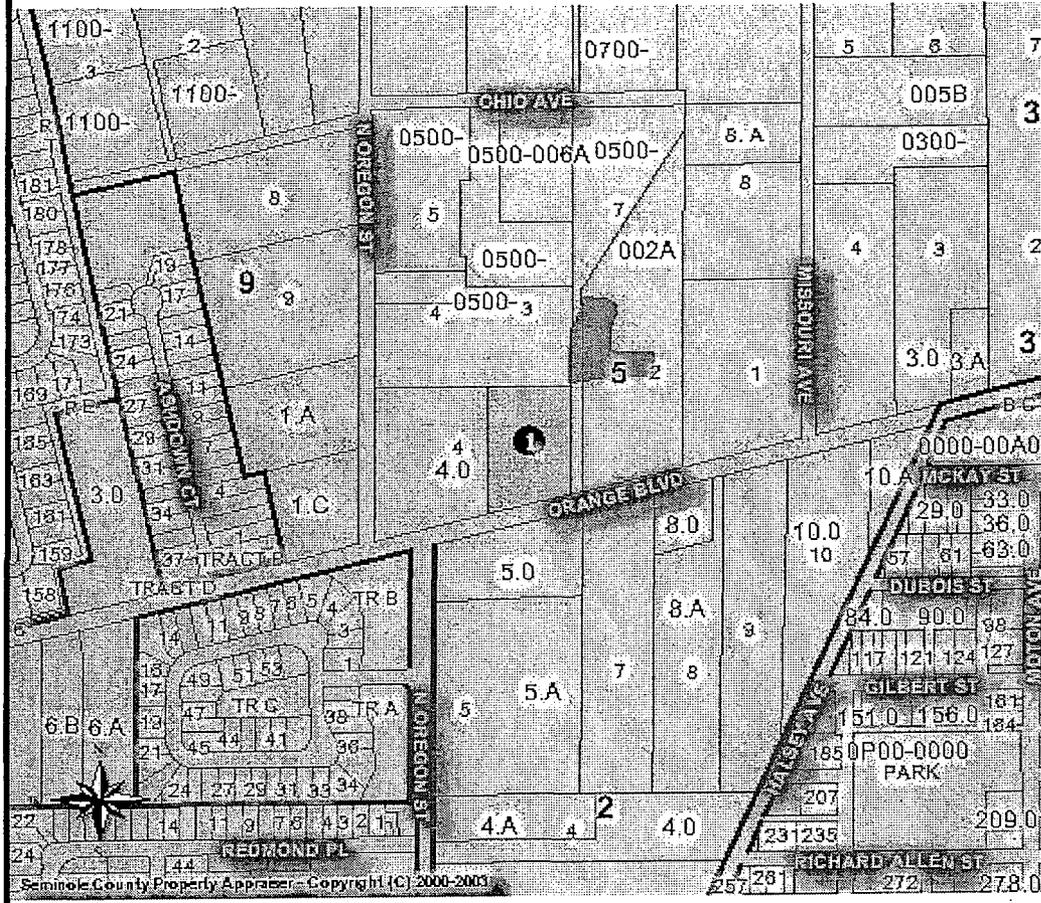
DGS/dre

Two (2) Attachments:

Exhibit A - Location Map

Exhibit B - Sketch

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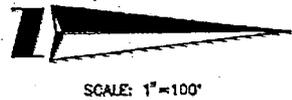
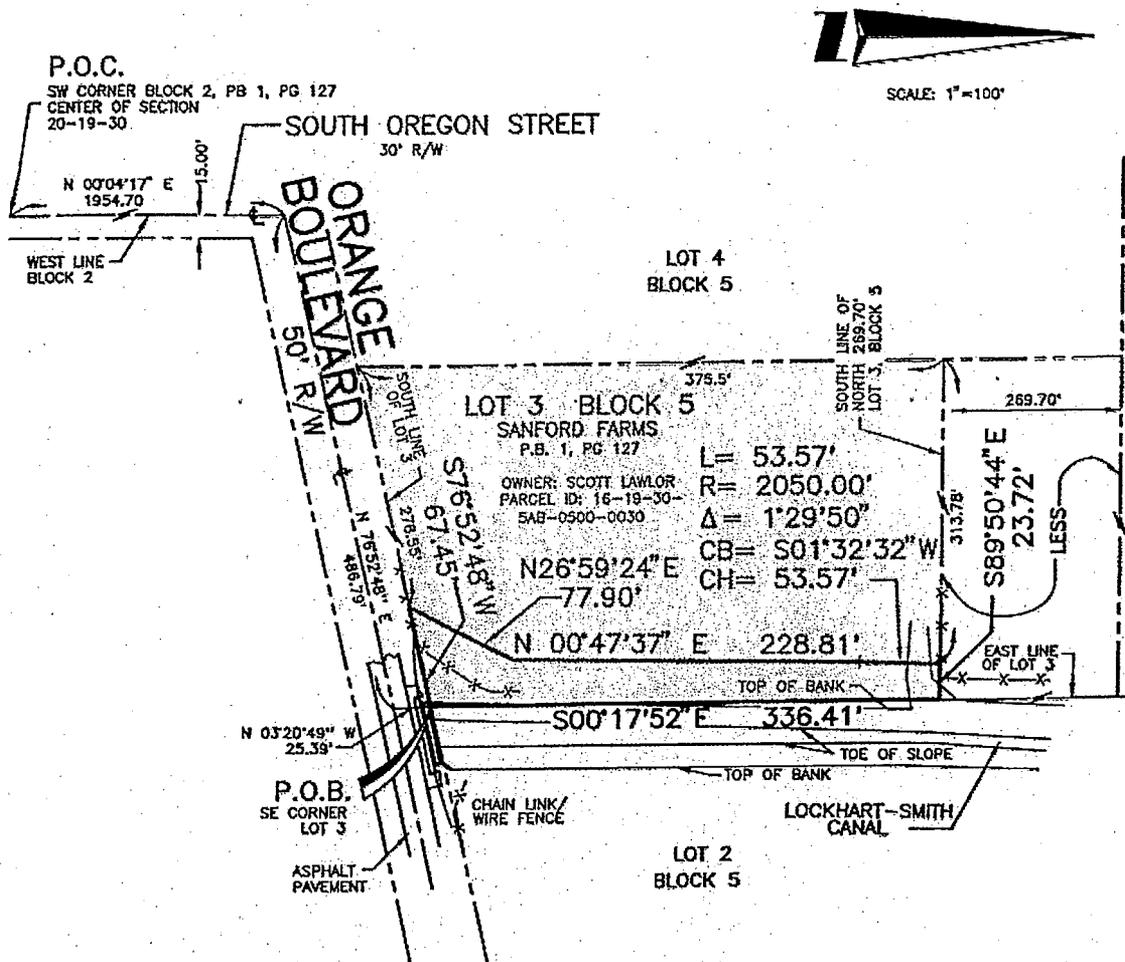


- Legend**
- Selected Features
 - County Boundary
 - Streets
 - Hydrology
 - Subdivision Lines
 - Parcels
 - Parcel Anno

Rec	Parcel	Owner	Owner Addr	City	State	Zip
1	1619305AB05000030	LAWLOR SCOTT	5368 ORANGE BLVD	SANFORD	FL	32771

EXHIBIT A

PROPERTY SKETCH OF AFFECTED PORTION ONLY (Does not include West Parcel)



- ABBREVIATIONS:**
- PB = PLAT BOOK
 - PG = PAGE(S)
 - R/W = RIGHT-OF-WAY
 - L = LENGTH OF CURVE
 - R = RADIUS
 - Δ = CENTRAL ANGLE
 - CB = CHORD BEARING
 - CH = CHORD DISTANCE
 - P.O.C. = POINT OF COMMENCEMENT
 - P.O.B. = POINT OF BEGINNING
 - CL = CENTERLINE
 - X- = WIRE FENCE

Drawing No. 48126014
Job No. 48126
Date: 3-20-03
SHEET 2 OF 2
See Sheet 1 for Description



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