

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Sobik's of Airport Blvd., Inc.

DEPARTMENT: County Attorney's Office

DIVISION: Litigation

AUTHORIZED BY: Lola Pfeil

CONTACT: Sharon Sharrer

EXT: 7257

MOTION/RECOMMENDATION:

Approval of a mediated settlement relating to Parcel Numbers 102/702 on the County Road 15 project in the amount of \$513,176.44 inclusive of all compensation to the owner, business damages, statutory attorney's fees, expert fees, cost reimbursements and interest, and any other matter for which Seminole County might be obligated to pay relating to these parcels. Judge Simmons.

District 5 Brenda Carey

Robert A. McMillan

BACKGROUND:

see attached

STAFF RECOMMENDATION:

Staff recommends that the Board approve the mediated settlement relating to Parcel Numbers 102/702 on the County Road 15 project in the amount of \$513,176.44 inclusive of all compensation to the owner, business damages, statutory attorney's fees, expert fees, cost reimbursements and interest, and any other matter for which Seminole County might be obligated to pay relating to these parcels.

ATTACHMENTS:

1. Sobik's of Airport Blvd., Inc.

Additionally Reviewed By: No additional reviews



COUNTY ATTORNEY'S OFFICE
MEMORANDUM

To: Board of County Commissioners

Through: Matthew G. Minter, Deputy County Attorney *Matthew G. Minter*

From: David G. Shields, Assistant County Attorney Ext. 5736 *David G. Shields*

Concur: Pam Hastings, Administrative Manager/Public Works Department *PH*
 Antoine Khoury, P.E., Assistant County Engineer *AK 11-12-08*
 0000 5801

Date: November 12, 2008

Subject: Settlement Authorization
 County Road 15
 Parcel Nos. 102/702
 Property owner: Sobik's of Airport Blvd., Inc.
 Seminole County v. Sobik's of Airport Blvd., Inc., et al
 Case No. 2007-CA-826-13-K

This Memorandum requests authorization by the Board of County Commissioners ("BCC") to authorize a mediated settlement for Parcel Nos. 102/702 on County Road 15 ("C15") as follows:

\$400,000.00, land, improvements, severance damages and business damages
 \$ 52,998.00 statutory attorney's fees.
\$ 60,178.44 expert fees and cost reimbursements
 \$513,176.44

I PROPERTY

A. Location Data

The subject property is located at the northeast side of C15 (Monroe Road) and State Road 46 in a portion of 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 105 Monroe Road, Sanford, FL.

C. Description

The parent tract consists of 29,935 square feet and is improved with a fast food restaurant that is currently operating.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2006-R-114 on May 9, 2006, authorizing the acquisition of Parcel Nos. 102/702 and found that the C15 improvement project is necessary, serves a public purpose and is in the best interests of the citizens of Seminole County. The Order of Take occurred on May 25, 2007, with title to Parcel No. 102 and the right to temporary use of Parcel No. 702 vesting in Seminole County on June 5, 2007, the date of the good faith deposit.

III ACQUISITION/REMAINDER

The proposed fee acquisition consists of 2,927 square feet and is a rectangle shaped parcel off the subject's frontage on C15. The temporary construction easement (TCE) contains 648 square feet and is also rectangular and was used to blend the new right-of-way with the access driveway on the remainder property.

IV APPRAISED VALUES

The County's initial appraised value for Parcel Nos. 102/702 was \$172,100.00 (\$163,200.00 for the fee and \$8,900.00 for the TCE). The County's appraisal was prepared by Florida Realty Analysts, Inc., and was approved by the County's MAI designated staff appraiser. The appraisal was updated for the order of taking hearing and it opined the values at \$175,200.00 (\$166,100.00 for the fee and \$9,100.00 for the TCE). The appraisal report provides a plan to cure the damages to the remainder that the take would otherwise cause. The appraisal report only appraises the land, improvements, and possible severance damages. The appraisal report does not encompass business damages. The County retained a separate expert, a certified public accountant, to evaluate Sobik's business damage claim.

The property owner's appraisal report dated July 3, 2008, and prepared by Calhoun, Dreggors & Associates, Inc. valued the property at \$326,300.00 as of June 5, 2007.

V BUSINESS DAMAGES

At the time of the taking, Sobik's fast food restaurant business had been in operation at the site since 2000, and it therefore qualifies for business damages.

A. County's Business Damage Report

The County retained a certified public accountant as its expert on the business damage claim. The expert has examined Sobik's supporting documents provided with the claim and opines business damages to be \$34,400.00 in a report received by the County on January 9, 2008. The County's expert did recognize a loss during the implementation of the cure to the owner's property and for 30 days thereafter, which is the basis for the \$34,400.00 amount. The County's expert concluded there were no permanent business damages.

B. Sobik's Business Damage Report

Sobik's business damage assessment was prepared by its owner, John Sobik utilizing calculations prepared by Morgenstern Phifer & Messina, P.A. Sobik's business damages claim is \$223,168.00. The nature and extent of Sobik's claimed business damages include a permanent loss of parking spaces, a constricted site, temporary loss during the time the cure is implemented, loss of visibility of signage and a general reduction in the desirability of the site for the business.

VI BINDING OFFER/STATUS OF THE CASE

The County's initial offer was \$205,000.00, exclusive of costs and attorney fees for the referenced parcels. The BCC approved an Offer of Judgment which was served to the property owner on August 7, 2008 in the amount of \$250,000.00 allocated as follows:

\$215,600.00 compensation for land, severance damages, and costs to cure
\$ 34,400.00 compensation for business damages

VI ATTORNEY'S FEES AND COSTS.

A. Attorney's Fees. The statutory attorney's fee reimbursement totals \$52,998.00. The sum is statutorily computed based upon a settlement sum of \$400,000.00 less the first written offer of \$205,000.00 and the business damage offer of \$34,400.00 to produce a benefit of \$160,600.00.

B. Expert's Fees/Costs. The owner's expert cost claim at \$68,923.44 was allocated:

(1)	Appraisal	\$22,389.00
(2)	Engineering	\$14,605.00
(3)	Planner	\$10,683.75
(4)	CPA	<u>\$21,245.69</u>
TOTAL:		<u>\$68,923.44</u>

In negotiation, the County was able to reduce the expert claims to \$60,178.44. The negotiated cost settlement is allocated as follows:

(1)	Appraisal	\$16,545.25
(2)	Engineering	\$14,605.00
(3)	Planner	\$ 9,600.00
(4)	CPA	<u>\$19,428.19</u>
TOTAL:		<u>\$60,178.44</u>

The negotiated cost reimbursement represents a reduction of 18.8% from the total requested costs.

VII COST AVOIDANCE

The combined appraisal and business damage amounts for each side were as follows:

County's experts	\$209,600.00
Owner's experts	\$549,468.00

The main disputed issue accounting for these different amounts was the number of parking spaces impacted by the take and the financial consequence of these spaces. Lost parking was a component of the owner's severance and business damage claim. The owner's president was very sensitive about the parking issue due to the nature of this fast food restaurant business. The County's experts acknowledged there was some impact to parking but it was not as severe as claimed by the owner's expert. In addition to the amounts specified in the expert reports, the owner also claimed the County had not re-established its driveway properly as part of the road construction project.

The midpoint between the County's and the owner's expert combined amounts was \$379,534.00. Each side had good faith credible arguments for its respective position about the parking space problem. Therefore, an even split seemed a reasonable resolution.

The \$400,000.00 settlement includes an additional \$20,466.00 above the \$379,534.00 midpoint. This additional amount represents the cost for the owner to modify its driveway to its liking and to cover any reasonable disruption cost to the business while the driveway is being redone. The County had already reestablished the owner's driveway as part of the road project. The County did not agree the driveway needed to be redone, but the owner claimed to have evidence of vehicles bottoming out on the driveway such that paying the owner for this issue seemed the prudent thing to do. Moreover, it seemed better for the County to pay the owner for this matter than to perform the work a second time only for the owner to demand it be redone a third time.

Therefore, the settlement of \$400,000.00 for the owner's direct compensation is reasonable. By approving the overall settlement of \$513,176.44, the BCC avoids any further costs with these parcels.

VIII RECOMMENDATION

County staff recommends that the BCC approves this mediated settlement at \$513,176.44 inclusive of all compensation to the owner, business damages, statutory attorney's fees, expert fees, cost reimbursements and interest and any other matter for which Seminole County might be obligated to pay relating to these parcels.

DGS/dre

Attachments

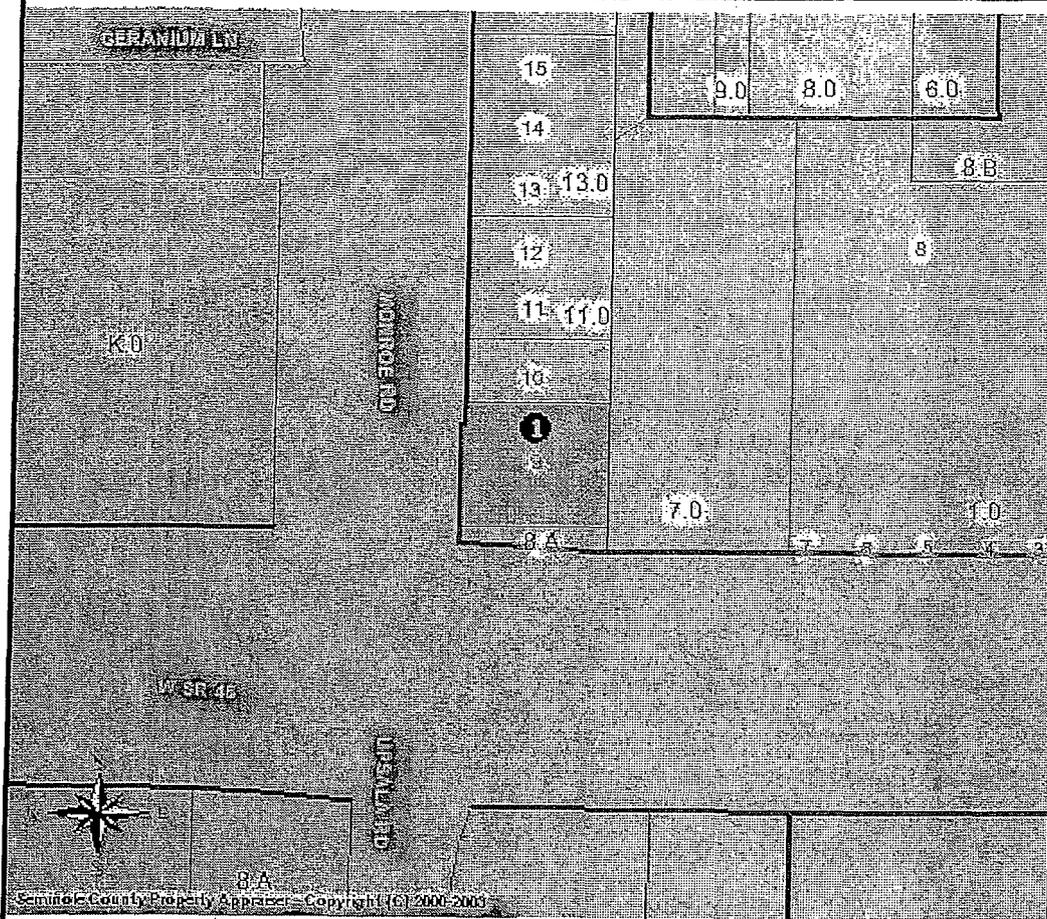
Exhibit A – Location map

Exhibit B – Parcel 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	28193050300000090	SOBIKS OF AIRPORT BLVD INC	105 MONROE RD	SANFORD	FL	32771

