

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: February 1, 2011 [X] Consent [] Regular
[] Public Hearing
Department
Submitted By: COUNTY ATTORNEY
Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a settlement in the amount of \$71,339 including attorney's fees, but excluding costs, in the eminent domain action styled Palm Beach County v. Joanne E. Josti, et al., Case No. 50 2006 CA010632XXXXMBAE, for the taking of parcels 112/312, owned by Joanne E. Josti.

Summary: The County has negotiated a settlement for parcels 112 and 312 in the amount of \$71,339 as compensation for the land taken, including attorney's fees, but excluding costs, subject to the approval of the Board of County Commissioners. The subject property is located on Seminole Pratt Whitney Road / Southern Blvd. to South of Okeechobee Boulevard. The County's expert appraiser valued the subject parcels at \$33,700 with a valuation date of November 22, 2006. The property owner's expert appraiser valued the subject parcels at \$105,970. The proposed settlement is \$62,000 for the land taken, plus attorney's fees in the amount of \$9339, calculated mathematically pursuant to Florida law. The funds for this settlement will be funded by the Engineering Five Year Road Program – Road Impact fees/Zone 3. District 6 (DRO)

Background and Justification:

The property permanently taken is 3842 square feet along the entire western property line of this single family residence, including improvements to the property. The road widening adjacent to the subject property and the related proximity to the increased traffic flow raise the uncurable severance damages to the remainder of this property. The proposed settlement in the amount of \$71,339 includes attorney's fees, but excludes costs. This settlement is full and final compensation for the property taken plus all damages to the remainder and eliminates all risk of an adverse jury verdict and liability for additional costs and attorney's fees. In order to minimize the County's exposure and substantial additional costs and attorney's fees, this settlement is recommended and is favorable to the County.

Attachments:

1. Stipulated Final Judgment.
2. Budget Availability Statement.

Recommended by:  Date 1/20/11
County Attorney Date

Approved by: N/A Date _____

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

PALM BEACH COUNTY, a political
subdivision of the State of Florida,

CASE NO.: 50 2006 CA010632 AE

PARCEL NO(S): 112/312

Petitioner,

vs.

JOANNE E. JOSTI, et al.,

Respondents.

**STIPULATED FINAL JUDGMENT AS TO
PARCELS 112 AND 312 OWNED BY JOANNE E. JOSTI**

THIS CAUSE having come before the Court on the Joint Motion by Petitioner, Palm Beach County, by and through its undersigned Assistant County Attorney, and Richard J. Dewitt, Esquire, attorney for the Respondent, Joanne E. Josti, and the Court being fully advised in the premises, hereby finds and decides as follows:

1. The Court has jurisdiction over the subject matter of, and the parties to this cause.
2. Respondent, Joanne E. Josti, shall have and recover the sum of **SIXTY TWO THOUSAND DOLLARS AND 00/100 CENTS (\$62,000.00)**, as full, just and final compensation to the Respondents for the taking of Parcels 112 and 312, excluding costs and attorney's fees. There are no taxes due on Parcels 112 and 312.
3. Petitioner, Palm Beach County, is entitled to a credit towards the final compensation in the sum of **THIRTY THREE THOUSAND SEVEN HUNDRED DOLLARS AND 00/100 (\$33,700.00)**, having previously deposited same into the Registry of the Court

pursuant to the Order of Taking entered on December 8, 2006, which the Respondent, Joanne E. Josti, withdrew as payment toward the full compensation.

4. Petitioner, Palm Beach County, shall within thirty (30) days from the date of entry of this Stipulated Final Judgment, issue a check in the amount of **TWENTY EIGHT THOUSAND THREE HUNDRED DOLLARS AND 00/100 (\$28,300.00)**, made payable to **BRIGHAM MOORE, LLP., TRUST ACCOUNT**, and mail same to Richard J. Dewitt, Esq., Brigham Moore, LLP., One Clearlake Center - Suite 1601, 250 South Australian Avenue, West Palm Beach, Florida, 33401, representing the difference between the agreed upon compensation referenced in paragraph two (2) and the amount the Petitioner previously deposited into the Registry of the Court and subsequently withdrawn by the Respondents for Parcels 112 and 312.

5. Title to Parcels 112 and 312, as further described in **Exhibit "A"** attached hereto, which vested in the Petitioner pursuant to the Order of Taking and deposit previously made, is hereby approved, ratified and confirmed.

6. Petitioner, Palm Beach County, shall within thirty (30) days from the date of entry of this Stipulated Final Judgment, issue a check in the amount **NINE THOUSAND THREE HUNDRED THIRTY NINE DOLLARS AND ZERO CENTS (\$9,339.00)** payable to **BRIGHAM MOORE, LLP., Trust Account**, as full satisfaction of Respondent's attorney's fees pursuant to Florida law, and mail same to: Richard J. Dewitt, Esq., Brigham Moore, LLP., One Clearlake Center – Suite 1601, 250 South Australian Avenue, West Palm Beach, FL 33401.

7. The sums paid to the Respondent, Joanne E. Josti, represent full and final compensation for the taking of Parcels 112 and 312, and the Respondent will not seek any

further compensation from the Petitioner in this cause, except as specifically set forth herein.

9. The Court reserves jurisdiction to enforce the terms of this judgment, over supplemental proceedings, if any, and to award reasonable expert fees and costs pursuant to Florida law.

DONE AND ORDERED in chambers at West Palm Beach, Palm Beach County, Florida this _____ day of _____, 2011.

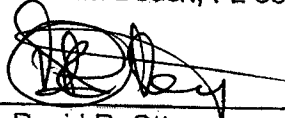
The Honorable Timothy McCarthy
Circuit Judge

JOINT MOTION

Petitioner, Palm Beach County, and Richard J. Dewitt, Esquire, attorney for the Respondent, Joanne E. Josti, hereby stipulate that they have resolved this case as described above, and move this Court for entry of the foregoing Stipulated Final Judgment.

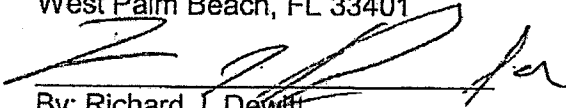
DATED this 21st day of January, 2011.

DAVID R. OTTEY, ESQ.
Assistant County Attorney
300 N. Dixie Hwy., Suite 359
West Palm Beach, FL 33401



By: David R. Ottey
Fla. Bar No. 015590

RICHARD J. DEWITT, ESQ.
Brigham Moore, LLP
One Clearlake Center - Suite 1601
250 South Australian Avenue
West Palm Beach, FL 33401



By: Richard J. Dewitt
Fla. Bar No. 879711

Copies furnished to the parties listed above

A PORTION OF THE SOUTH 278 FEET OF THE NORTH 4078 FEET OF THE EAST 234 FEET OF THE WEST 1934 FEET OF SECTION 25, TOWNSHIP 43 SOUTH, RANGE 40 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 25; THENCE SOUTH 88°30'09" EAST ALONG THE NORTH LINE OF SAID SECTION 25 A DISTANCE OF 1664.89 FEET TO THE CENTERLINE OF SEMINOLE-PRATT WHITNEY ROAD AS SHOWN ON ROAD PLAT BOOK 4 AT PAGES 34 THROUGH 40 OF THE PUBLIC RECORDS PALM BEACH COUNTY, FLORIDA; THENCE SOUTH 01°32'25" WEST ALONG SAID CENTERLINE OF SEMINOLE-PRATT WHITNEY ROAD A DISTANCE OF 3800.00 FEET TO ITS INTERSECTION WITH THE WESTERLY EXTENSION OF THE CENTERLINE OF EPSOM DRIVE; THENCE SOUTH 88°30'09" EAST ALONG SAID EXTENSION OF THE CENTERLINE OF EPSOM DRIVE A DISTANCE OF 50.00 FEET TO ITS INTERSECTION WITH THE EXISTING EAST RIGHT OF WAY LINE OF SEMINOLE-PRATT WHITNEY ROAD AND THE POINT OF BEGINNING;

THENCE CONTINUE SOUTH 88°30'09" EAST ALONG SAID CENTERLINE OF EPSOM DRIVE A DISTANCE OF 35.00 FEET (SAID CENTERLINE ALSO BEING THE SOUTH LINE OF THE NORTH 3800 FEET OF SAID SECTION 25); THENCE SOUTH 01°34'33" WEST A DISTANCE OF 30.00 FEET; THENCE SOUTH 46°31'08" WEST A DISTANCE OF 35.34 FEET; THENCE SOUTH 01°32'25" WEST ALONG A LINE 10 FEET EAST OF AND PARALLEL WITH (AS MEASURED AT RIGHT ANGLES TO) THE EXISTING EAST RIGHT OF WAY LINE OF SEMINOLE-PRATT WHITNEY ROAD A DISTANCE OF 223.02 FEET TO THE SOUTH LINE OF THE NORTH 4078 FEET OF SAID SECTION 25; THENCE NORTH 88°30'09" WEST ALONG SAID SOUTH LINE A DISTANCE OF 10.00 FEET TO THE EXISTING EAST RIGHT OF WAY LINE OF SEMINOLE-PRATT WHITNEY ROAD; THENCE NORTH 01°32'25" EAST ALONG SAID EXISTING EAST RIGHT OF WAY LINE OF SEMINOLE-PRATT WHITNEY ROAD A DISTANCE OF 278.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA AND CONTAIN 3842 SQUARE FEET, MORE OR LESS.

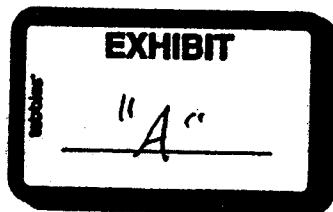
BEARINGS SHOWN HEREON ARE RELATIVE TO THE NATIONAL OCEAN SERVICE, TRANSVERSE MERCATOR COORDINATES, FLORIDA EAST ZONE, NORTH AMERICAN DATUM (NAD) OF 1983 (1990 ADJUSTMENT) THE GRID BEARING BEING NORTH 01°32'25" EAST ALONG THE CENTERLINE OF SEMINOLE-PRATT WHITNEY ROAD.

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THE ATTACHED SKETCH AND THE ABOVE LEGAL DESCRIPTION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THE ATTACHED SKETCH AND ABOVE LEGAL DESCRIPTION MEET THE INTENT OF THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO SECTION 472.027, FLORIDA STATUTES AND ADOPTED IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, EFFECTIVE SEPTEMBER 1, 1981.

NOT VALID UNLESS EMBOSSED WITH SURVEYORS SEAL.

Katherine E. Banko
KATHERINE E. BANKO
PROFESSIONAL SURVEYOR AND MAPPER
NO. 5503, STATE OF FLORIDA
LB NO. 7334



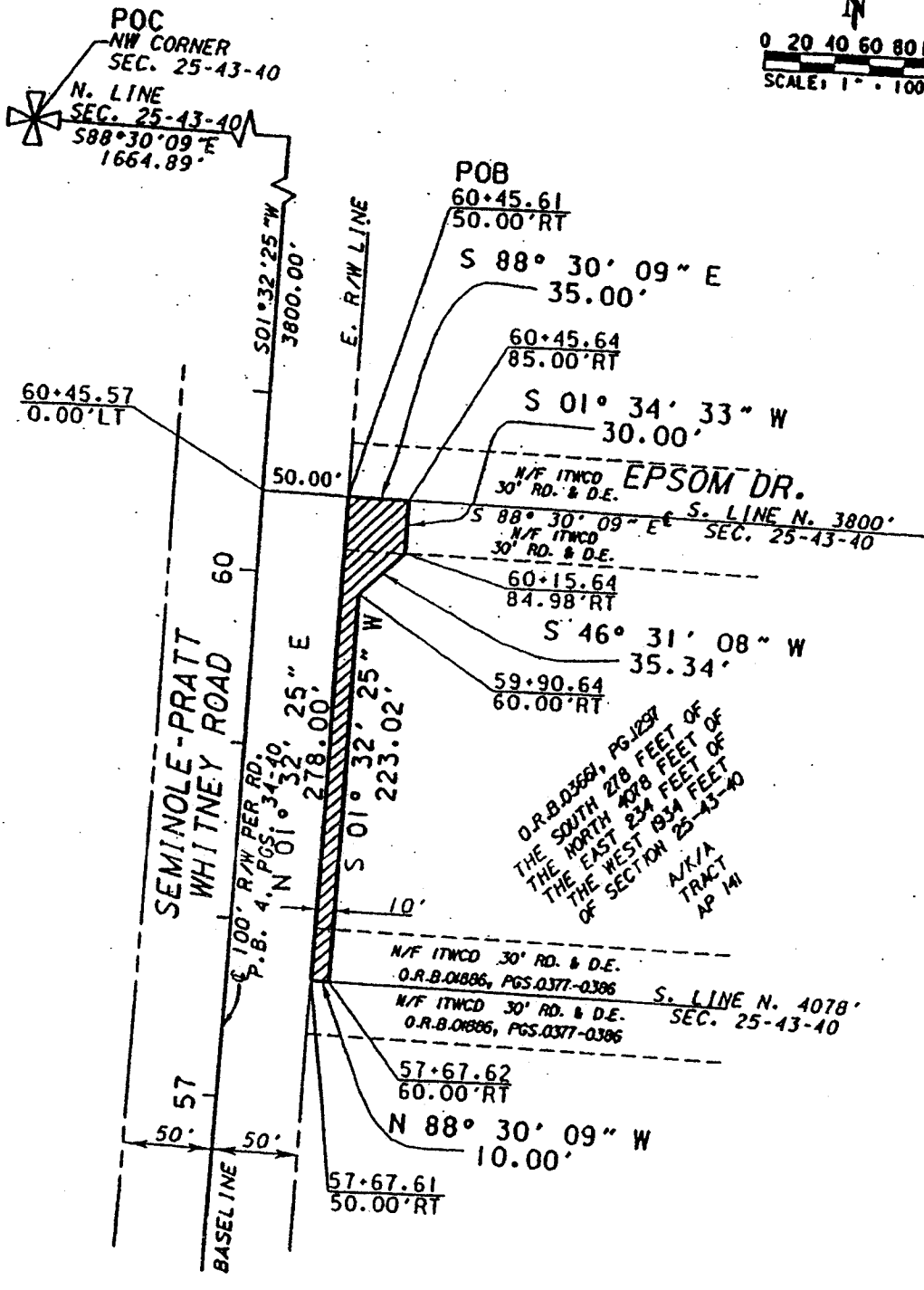
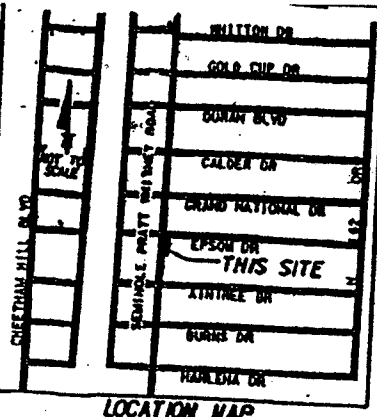
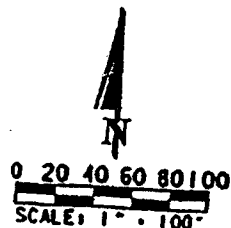
PROJECT NO. 1997511A
SEMINOLE-PRATT
WHITNEY ROAD
RIGHT OF WAY ACQUISITION

CrossROADS
ENGINEERING & SURVEYING
An Erdman Anthony Company
1402 ROYAL PALM BEACH BLVD., BLDG 500
ROYAL PALM BEACH, FLORIDA 33411
PH 561-753-9723 FAX 561-753-9724 ED-25912 LB-7334

LEGAL DESCRIPTION
PARCEL NO. 112

CRES No. 00107	REV. 08/31/05	07/08/05	1 OF 2
----------------	---------------	----------	--------

EXHIBIT "B"
SHEET 2 OF 2



- LEGEND:
- C : CENTERLINE
 - ITWCD : INDIAN TRAIL WATER CONTROL DISTRICT
 - N/F : NOW OR FORMERLY
 - O.R.B. : OFFICIAL RECORDS BOOK
 - P.B. : PLAT BOOK
 - PGS. : PAGES
 - POB : POINT OF BEGINNING
 - POC : POINT OF COMMENCEMENT
 - R/W : RIGHT OF WAY
 - R.D.E. : ROAD AND DRAINAGE EASEMENT
 - SEC. : SECTION

THIS IS NOT A SURVEY

STATIONING PER RD. P.B. 4, PGS. 34-40
PUBLIC RECORDS OF PALM BEACH COUNTY RECORDS

PROJECT NO. 1997511A
SEMINOLE-PRATT
WHITNEY ROAD
RIGHT OF WAY ACQUISITION

CROSSROADS
ENGINEERING & SURVEYING
An Erdman Anthony Company
1402 ROYAL PALM BEACH BLVD., BLDG 500
ROYAL PALM BEACH, FLORIDA 33411
PH 561-753-9723 FAX 561-753-9724 EB-25912 LB-7334

SKETCH OF
PARCEL NO. 112

e:\PROJECTS\00107-Sem Pratt\USTN\sketches\PAR112.dgn

CRES No. 00107	REV. 08/31/05	07/08/05	2 OF 2
----------------	---------------	----------	--------

EXHIBIT "B"
SHEET 1 OF 2

A PORTION OF THE SOUTH 278 FEET OF THE NORTH 4078 FEET OF THE EAST 234 FEET OF THE WEST 1934 FEET OF SECTION 25, TOWNSHIP 43 SOUTH, RANGE 40 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 25; THENCE SOUTH 88°30'09" EAST ALONG THE NORTH LINE OF SAID SECTION 25 A DISTANCE OF 1664.89 FEET TO THE CENTERLINE OF SEMINOLE-PRATT WHITNEY ROAD AS SHOWN ON ROAD PLAT BOOK 4 AT PAGES 34 THROUGH 40 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE SOUTH 01°32'25" WEST ALONG SAID CENTERLINE OF SEMINOLE-PRATT WHITNEY ROAD A DISTANCE OF 3800.00 FEET TO ITS INTERSECTION WITH THE WESTERLY EXTENSION OF THE CENTERLINE OF EPSOM DRIVE; THENCE SOUTH 88°30'09" EAST ALONG SAID EXTENSION OF THE CENTERLINE OF EPSOM DRIVE A DISTANCE OF 64.00 FEET; THENCE SOUTH 01°32'25" WEST ALONG A LINE 14 FEET EAST OF AND PARALLEL WITH (AS MEASURED AT RIGHT ANGLES TO) THE EAST RIGHT OF WAY LINE OF SAID SEMINOLE-PRATT WHITNEY ROAD AS SHOWN ON SAID ROAD PLAT BOOK 4 AT PAGES 34 THROUGH 40 A DISTANCE OF 50.98 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE SOUTH 01°32'25" WEST ALONG SAID LINE A DISTANCE OF 227.02 FEET TO THE SOUTH LINE OF THE NORTH 4078 FEET OF SAID SECTION 25; THENCE NORTH 88°30'09" WEST ALONG SAID SOUTH LINE A DISTANCE OF 4.00 FEET; THENCE NORTH 01°32'25" EAST ALONG A LINE 10 FEET EAST OF AND PARALLEL WITH (AS MEASURED AT RIGHT ANGLES TO) SAID EAST RIGHT OF WAY LINE A DISTANCE OF 223.02 FEET; THENCE NORTH 46°31'08" EAST A DISTANCE OF 5.66 FEET TO THE POINT OF BEGINNING.

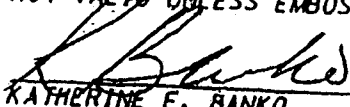
SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA AND CONTAIN 900 SQUARE FEET, MORE OR LESS.

BEARINGS SHOWN HEREON ARE RELATIVE TO THE NATIONAL OCEAN SERVICE, TRANSVERSE MERCATOR COORDINATES, FLORIDA EAST ZONE, NORTH AMERICAN DATUM (NAD) OF 1983 (1990 ADJUSTMENT) THE GRID BEARING BEING NORTH 01°32'25" EAST ALONG THE CENTERLINE OF SEMINOLE-PRATT WHITNEY ROAD.


SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THE ATTACHED SKETCH AND THE ABOVE LEGAL DESCRIPTION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THE ATTACHED SKETCH AND ABOVE LEGAL DESCRIPTION MEET THE INTENT OF THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO SECTION 472.027, FLORIDA STATUTES AND ADOPTED IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, EFFECTIVE SEPTEMBER 1, 1981.

NOT VALID UNLESS EMBOSSED WITH SURVEYORS SEAL.


KATHERINE E. BANKO
PROFESSIONAL SURVEYOR AND MAPPER
NO. 5503, STATE OF FLORIDA
LB NO. 7334

PROJECT NO. 1997511A
SEMINOLE-PRATT
WHITNEY ROAD
TEMPORARY CONSTRUCTION
EASEMENT

 **CROSSROADS**
ENGINEERING & SURVEYING
An Erdman Anthony Company
1402 ROYAL PALM BEACH BLVD., BLDG 500
ROYAL PALM BEACH, FLORIDA 33411
PH 561-753-9729 FAX 561-753-9724 EB-25912 LB-1734

LEGAL DESCRIPTION
PARCEL NO. 312

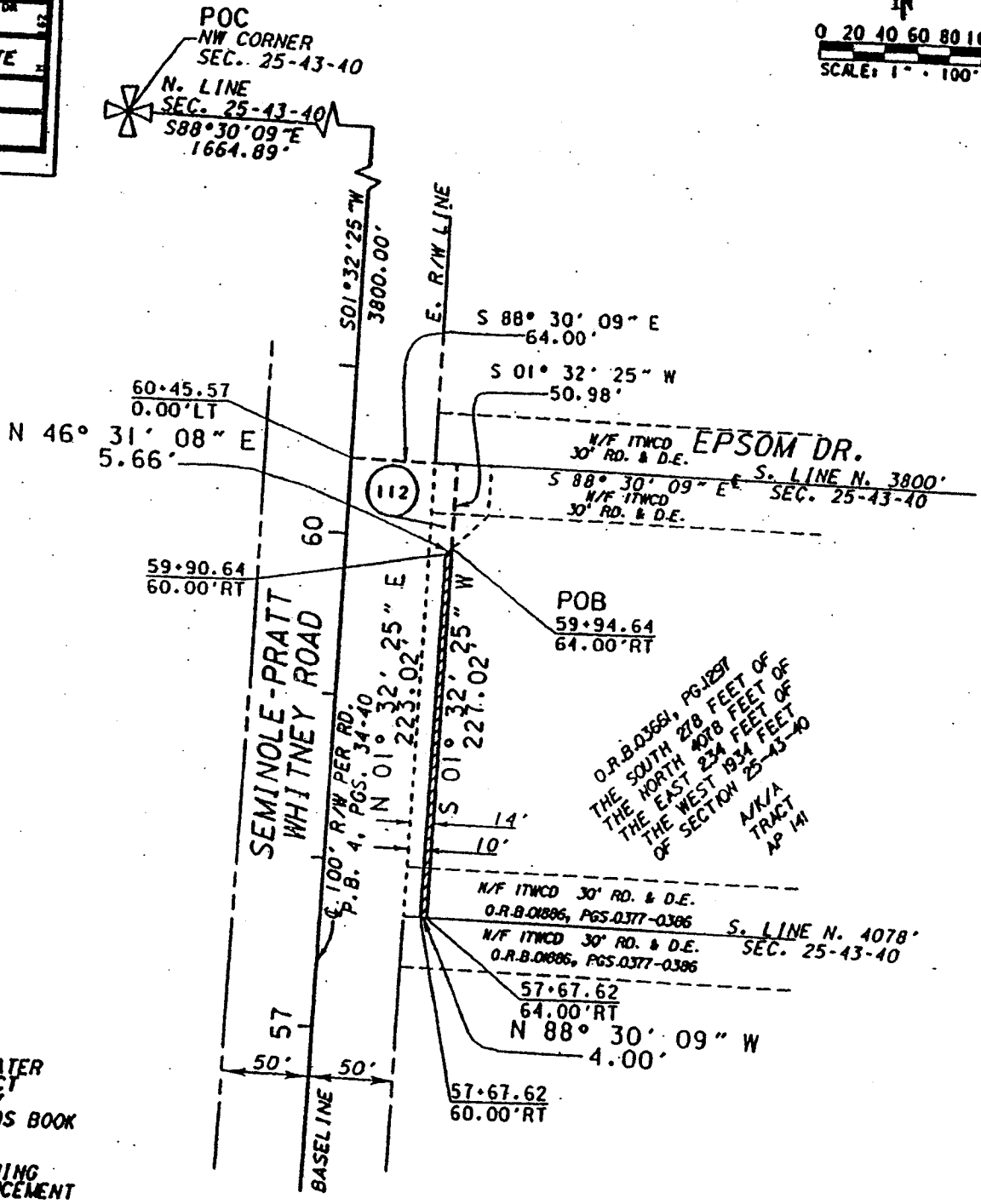
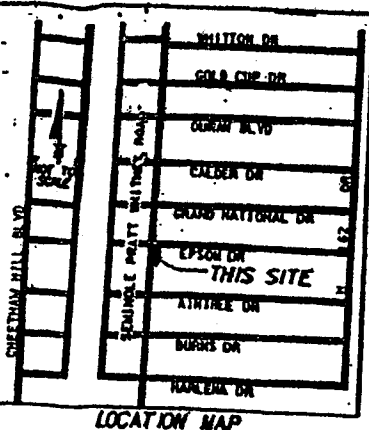
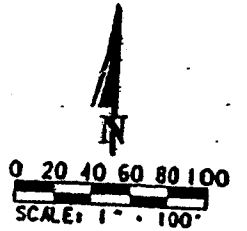
CRES No. 00107

09/12/05

1 OF 2

PROJECTS00107-Sem Pratt/IST/Metro/1249

EXHIBIT "B"
SHEET 2 OF 2



O.R.B. 03661, PG. 12817
THE SOUTH 278 FEET OF
THE NORTH 4078 FEET OF
THE EAST 234 FEET OF
THE WEST 1934 FEET OF
OF SECTION 25-43-40
N/A
TRACT
No. 141

- LEGEND:
- CL - CENTERLINE
 - ITWCD - INDIAN TRAIL WATER CONTROL DISTRICT
 - N/F - NOW OR FORMERLY
 - O.R.B. - OFFICIAL RECORDS BOOK
 - P.B. - PLAT BOOK
 - P.G.S. - PAGES
 - POB - POINT OF BEGINNING
 - POC - POINT OF COMMENCEMENT
 - R/W - RIGHT OF WAY
 - R.D.E. - ROAD AND DRAINAGE EASEMENT
 - SEC. - SECTION

(112) - PARCEL NUMBER

THIS IS NOT A SURVEY

STATIONING PER RD. P.B. 4, PGS. 34-40
PUBLIC RECORDS OF PALM BEACH COUNTY RECORDS

PROJECT NO. 1997511A
SEMINOLE-PRATT
WHITNEY ROAD
TEMPORARY CONSTRUCTION
EASEMENT

CROSSROADS
ENGINEERING & SURVEYING
An Erdman Anthony Company
1402 ROYAL PALM BEACH BLVD., BLDG 500
ROYAL PALM BEACH, FLORIDA 33411
PH 561-753-9723 FAX 561-753-9724 ED-25612 18-7114

SKETCH OF
PARCEL NO. 312

CRES No. 001074

**INTEROFFICE COMMUNICATION
PALM BEACH COUNTY
BUDGET AVAILABILITY STATEMENT**

DATE: January 18, 2011 REVISED
TO: David R. Ottey, Assistant County Attorney
County Attorney's Office
FROM: Alexis T. Willhite, Director *atw*
Administrative Services
RE: Seminole Pratt/SR 80 to 3 of Okeechobee Blvd
Project # 1997511A
Case No: 502006CA010682MBAE
Parcels 112 & 312
Eminent Domain Settlement \$71,339.00

BOARD MEETING DATE: February 1, 2011

FISCAL IMPACT LOCATION: F:\COMMON\WP\AgendaPage2\ 00086

FUNDING STATUS: FULLY FUNDED

Is Item Included in Current Budget? Yes X No

Budget Account No:

Fund 3503 Dept 361 Unit 0725 Object 6120

Recommended Sources of Funds/Summary of Fiscal Impact:

Road Impact Fee Fund - Zone 3

Seminole Pratt/SR 80 to 3 of Okeechobee Blvd

Settlement Amount	\$71,339.00
Additional Costs	\$11,000.00
Total Cost	<u>\$82,339.00</u>
Less Previous Deposits-Court Registry	<u><\$33,700.00></u>
Fiscal Impact	\$48,639.00

This BAS is valid for up to ninety days from its date of issuance.
F:\ADM_SER\WP509\BAS\bas11\000867_row.doc