




## COUNTY ATTORNEY'S OFFICE MEMORANDUM

To: Board of County Commissioners

From: Lynn Porter-Carlton, Deputy County Attorney *Lynn Porter-Carlton*

Through: Jean Jreij, P.E., Director, Public Works Department 

Date: May 4, 2023

Subject: Proposed Mediated Settlement Between Seminole County and AutoZone, Inc. as to Parcels 101 and 701 of the Oxford Road Improvement Project in the *Seminole County v. AutoZone, Inc., et al.* Eminent Domain Case

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This Memorandum requests approval by the Board of County Commissioners of a proposed mediated settlement that has been negotiated, subject to Board approval, with the above-referenced property owner as to Parcels 101 and 701 of the Oxford Road Improvement Project. This matter is being scheduled as a Public Works Agenda item for the May 23, 2023 agenda.

### I. THE PROPERTY

The subject property, owned by AutoZone, Inc., is approximately 1.0 acre (43,386 square feet) located at 7121 South U.S. Highway 17-92 at the southeast corner of US Highway 17-92 and Lowe's Access Road in the Fern Park area of unincorporated Seminole County. It is zoned C-2, Retail Commercial, within the Oxford Place Overlay, and has a future land use designation of MXD, Mixed Development. The site is improved with an AutoZone branded auto parts store that contains 8,090 square feet and was constructed in 1991.

The portion of the property designated as Parcel 101 of the Oxford Road Improvement Project is a 0.13 acre (5,819 square feet) strip for proposed right of way located along the Lowe's Access Road frontage on the north side of the property. Parcel 101 equates to approximately 13% of the site and includes a corner clip at the US Highway 17-92 frontage. Site improvements within the Parcel 101 area of taking consist of 2,500 square feet of asphalt paving (eight parking spaces), pavement markings, parking stops, 325 linear feet of concrete curb, parking lot lighting poles/wiring, landscaping (15 shrubs, 5 trees, 2,625 square feet of sod), irrigation connections, and an AutoZone pole sign along the US Highway 17-92 frontage of the property. Parcel 701 is a temporary construction easement of 839 square feet at the current entry to the property along the site's Lowe's Access Road frontage.

## **II. BACKGROUND**

The terms of the proposed mediated settlement are set forth in Section IV. below. Public Works Department Director Jean Jreij, Deputy County Attorney Lynn Porter-Carlton, and outside counsel for the Oxford Road Improvement Project, Richard Milian of Nelson Mullins Riley & Scarborough, LLP, attended the mediation and recommend approval of the proposed settlement.

## **III. APPRAISED VALUES**

As previously approved by the Board, the County made pre-litigation written incentive offers to the property owner of \$253,924 for Parcel 101 and \$5,858 for Parcel 701 (20% over the previous appraised values of \$211,603 and \$4,882, respectively, by appraiser Daniel R. DeRango, MAI, CCIM, then with DeRango, Best & Associates, Inc. and now with BBG Real Estate Services, which the property owner did not accept. As provided in Section 73.092(1)(a), *Florida Statutes*, the written offers act as a limitation on attorneys' fees for the property owner's attorneys.

Mr. DeRango's updated appraised values of Parcel 101 and Parcel 701 as of October 14, 2022, were \$394,986 and \$5,858, respectively. In forming his updated value estimates for the subject parcels, he opined that the market value of the land and improvements had increased since his May 2020 appraisal. Based on the locational and physical characteristics of the building improvements and the longstanding market history and demand for such properties, Mr. DeRango considered the highest and best use of the subject property to be for continued use of the building improvements as improved. Using the Sales Comparison Approach, Mr. DeRango opined that the value of the land of the subject property as if vacant and available for development before the taking was \$24.00 per square foot, or \$1,041,000, rounded down. He opined that the value of the property as improved with a chain auto parts store before the taking was \$397 per square foot, or \$2,993,000. Using the Income Capitalization Approach, which is based on the premise that a prudent investor would pay no more for one property than they would for another with similar financial risk and return characteristics, Mr. DeRango determined an indicated value of the property before the taking of \$3,086,000. In his reconciliation of the Sales Comparison Approach and Income Capitalization Approach valuations, Mr. DeRango gave equal emphasis to the two indications of value and concluded that the market value of the property before the taking is \$3,050,000. Without the cure set forth in Mr. DeRango's appraisal involving conveyance of the adjacent property for parking and potential access to 17-92 if allowed by FDOT, then Mr. DeRango opined there would be damages of \$948,000 and that his total opinion of value would exceed \$1,200,000.

The remainder property will be negatively impacted by the taking due to a reduced level of access to US Highway 17-92 via two access points along the Lowe's Access Road. The Oxford Road extension will connect to the existing alignment of Oxford Road to the east of the subject property. The Lowe's Access Road will become Oxford Road and will be divided by a concrete median which will limit access to the AutoZone property for westbound traffic on Oxford Road

and will limit access to US Highway 17-92 for vehicles leaving the subject property because it will allow right in/right out turns only. In order to access the traffic signal with US Highway 17-92, a U-turn will be required at the median break approximately 525 feet east of the subject property's eastern access point.

Richard C. Dreggors, GAA, with real estate appraisal firm Calhoun, Dreggors & Associates, Inc., appraised the subject property on behalf of the property owner. Mr. Dreggors had opined that the value of Parcels 101 and 701 as of September 22, 2022 was \$2,155,000 as follows:

Parcel 101

Land Taken	\$ 186,200
Improvements Taken	\$ 157,400
Incurable Damages	\$1,733,800
Partial Cure Cost	\$ 72,600

Parcel 701

Temporary Construction Easement	\$ 5,000
	\$2,155,000

At the time of the mediation, the owner's attorneys presented Mr. Dreggors' updated opinion of value of \$3,300,000. In addition to the owner's appraiser's opinion of value of the taking, the opinion of the owner's engineering experts was that the taking would eliminate 12 parking spaces, affect the site's drainage through loss of a catch basin, result in access and maneuverability problems for the full size 18 wheel trucks that make deliveries and cause customers to have to take a circuitous route to exit the site. AutoZone, Inc. contended that the site would be rendered unusable. Its business damage expert opined that the business would incur business damages of \$6,152,951 based on a wipeout of the business.

The County's engineers modified the construction plans to move the proposed median back five feet east from 17-92 and to widen the driveway opening off the Lowe's Access Road from 36 to 40 feet, which eliminated the owner's concerns regarding truck access.

The mediated settlement amount of \$2,600,000 for compensation to the owner is a significant reduction from the owner's total claim for compensation of \$9,452,951, which amount did not include experts' fees, costs and attorneys' fees.

#### **IV. TERMS OF THE PROPOSED MEDIATED SETTLEMENT**

The proposed mediated settlement, which if approved by the Board, would resolve all issues between the property owner and the County, provides as follows:

- Compensation: AutoZone, Inc. shall receive \$2,600,000 in full settlement of all claims for compensation from the County by the property owner, exclusive of attorneys' fees and experts' fees and costs.
- Experts' fees and costs: The County shall pay the total sum of \$149,000 for all of AutoZone, Inc.'s experts' fees and costs, as follows:

Calhoun Dreggors & Associates, Inc. (appraisers)	\$ 42,500
Mesimer and Associates, Inc. (engineers)	\$ 48,700
Morgenstern Phifer & Messina, P.A. (business damage expert)	\$ 46,970
Fred B. LaDue & Associates, Inc. (fixtures appraiser)	\$ 6,000
R.B. Roberts & Associates, Inc. (general contractor)	\$ 5,200
	<u>\$149,000</u>

This is a negotiated reduction from the owner's experts' actual fees and costs of \$181,992.81.

- Attorneys' fees: The County shall pay the total sum of \$595,000 for AutoZone, Inc.'s attorneys' fees, inclusive of statutory fees, apportionment, supplemental proceedings, benefits and non-monetary benefits, if any. As part of the proposed mediated settlement, AutoZone, Inc.'s attorneys agreed to waive any non-monetary benefit attorneys' fees.
- Litigation costs: The County shall pay the total sum of \$2,459 for AutoZone, Inc.'s litigation costs for deposition transcripts and service of subpoenas. This is a negotiated reduction from the actual litigation costs of \$6,959.
- AutoZone, Inc. shall execute and deliver a Quit-Claim Deed, or other sufficient document, to Seminole County, Florida, relinquishing any easement interest that AutoZone, Inc. has, by virtue of the Deed of Declaration recorded in Book 2213, Pages 1153-1167, of the Official Records of Seminole County, Florida, in the area needed for construction of the Fern Park Extension.
- Any approvals needed from Seminole County for AutoZone, Inc. to implement the proposed modifications depicted in the drawings prepared by Mesimer and Associates, Inc. dated 2-14-23, including but not limited to any necessary variance approvals for landscape buffers to ensure a continuous 24-foot driveway aisle adjacent to the north property line, open/green space requirements, relocation of existing business sign, the widening of the eastern driveway connection by an additional 2 feet and removal of the western 5 feet of the proposed Fern Park Extension median. Any site modifications to be made by AutoZone shall be constructed in accordance with Seminole County Code. This settlement does not

include conveyance of the property identified as the cure parcel on the Mesimer and Associates' drawings, which AutoZone declined.

- The parties agree to jointly prepare and submit to the Court a Stipulated Order of Taking and Final Judgment incorporating all final settlement terms within twenty (20) days from the date of approval of the proposed mediated settlement by the Board of County Commissioners.

The proposed settlement includes the property owner's stipulation to entry of an Order of Taking by the Court, following which title will vest in the County upon the deposit of funds into the Court Registry. It provides an early resolution of all issues as to Parcels 101 and 701, provides certainty to the parties rather than the uncertainty of a contested Order of Taking hearing, a potential appeal, and a jury trial as to compensation, avoids incurring additional experts' fees and costs for both parties in the eminent domain case which the County would be statutorily required to pay, and avoids incurring potential additional attorneys' fees that the County would be statutorily required to pay for the property owner's attorneys if a jury were to award a higher compensation amount.

## **V. RECOMMENDATION**

Public Works Department Director Jean Jreij, P.E., Deputy County Attorney Lynn Porter-Carlton, and Richard Milian of Nelson Mullins Riley & Scarborough, LLP recommend that the Board: (1) approve the proposed mediated settlement between the County and AutoZone, Inc., and (2) authorize counsel to submit a Joint Motion and Stipulation for Entry of a Stipulated Order of Taking and Final Judgment With Instructions to the Clerk of Court for Disbursement for entry by the Circuit Court in the eminent domain case.