

COMMISSION AGENDA:

4. 7. 09 #22

TO: The Honorable Chairman and Members of
the Board of County Commissioners

FROM: James L. Bennett, County Attorney *JB*

SUBJECT: Pinellas County v. Patricia S. Humberstone, as Trustee
Circuit Civil Case No. 06-2019-CI-21
Parcel P001-R1 – Eminent Domain Case

DATE: April 2, 2009

Attached for your consideration is the memorandum from Mary Doty Solik, Esq., Foley & Lardner LLP, outside counsel retained by the County to conclude the above-captioned litigation, which recommends that this eminent domain case be settled on the terms set out therein. This matter is scheduled for consideration by the Board of County Commissioners on the April 7, 2009 agenda.

This settlement recommendation, which is now a public record, is being processed in this manner because of the need for transparency in transactions involving County-related parties (the defendant, as trustee of a land trust, is the spouse of a county employee), as expressed when the Board of County Commissioners discussed retaining outside counsel in this matter, and as recommended by the Blue Ribbon Panel on Real Estate Practices. If you have any questions regarding this process, please contact me, or Dennis Long in my absence. Outside counsel will attend the April 7 Board meeting, and will be available to answer questions regarding the recommended settlement. The appraisals referenced in the attached memorandum are available in the County Attorney's Office for review.

JLB/cad
Attachment

MEMORANDUM

CLIENT MATTER NUMBER
092077 0101

TO: Chairman Calvin D. Harris
Vice Chairman Karen Williams Seel
Commissioner Neil Brickfield
Commissioner Nancy Bostock
Commissioner Susan Latvala
Commissioner John Morreri
Commissioner Kenneth T. Welch

FROM: Mary Doty Solik, Esq.

DATE: March 4, 2009

RE: Pinellas County v. Patricia Humberstone, as Trustee: Pinellas County Circuit
Court Case No. 06-2019-CI-21 Mediated Settlement Agreement

BACKGROUND

The referenced matter is an eminent domain case filed by Pinellas County in 2006 to acquire a 7,298 square foot parcel of land from Patricia Humberstone, as Trustee. The Humberstone property is located adjacent to the St. Petersburg – Clearwater International Airport and was necessary for airport expansion. An Order of Taking was entered on April 3, 2006. The law firm of Foley & Lardner LLP was retained by Pinellas County on January 30, 2008 to get the case wrapped up. I have been the specific Foley & Lardner attorney handling the matter.

The case is currently set for trial on Judge John Schaeffer's April 20, 2009 trial docket. Although the matter was mediated in May 2007, counsel for both parties agreed that a second mediation, prior to either side engaging in substantial pretrial discovery and trial preparation, would be prudent. To that end, the parties participated in mediation on February 27, 2009. Peter Yauch attended with me as Pinellas County's representative and Ms. Humberstone and her counsel, James Helinger, attended on the respondent's behalf. The Mediation resulted in a mediated settlement agreement, a copy of which is attached, which is contingent on your approval. For the reasons set forth below, I recommend approval of the settlement agreement.

DISCUSSION

Prior to the taking the Humberstone property was ± 1.004 acres (43,735 square feet) and improved with three metal buildings, all built in the early 1970s. The property is located on the north side of Ulmerton Road. The property is rectangular in shape but narrow and deep. The buildings ranged in size from 4,344 square feet to 5,147 square feet. The taking involved the northern 7,298 square feet of land area and the northernmost building (4,344 sq. ft.). Sketches are attached. All three buildings were tenant occupied. The tenant occupying the acquired building was relocated in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act. These relocation benefits are payable directly to the tenant, have been made, and are not at issue in this Mediated Settlement Agreement or in the pending suit.

Pinellas County relied upon Dan K. Richardson for its appraisal of the value of the land acquired. Mr. Richardson's first report, with a date of value of September 25, 2005, concluded to a value of \$279,700. This value included the following:

Land	\$62,100
Net damages/Improvements	166,900
Costs to Cure	<u>50,700</u>
	\$279,700

The \$50,700 number was attributable to the cost to connect the remainder property to the City of Largo public sewer line on the south side of Ulmerton Road. At the time of this report it was known that the Humberstone property was serviced by an onsite septic tank system but the exact location of the underground drainfields was unknown. Mr. Richardson took a conservative approach and included the cost of connecting to public sewer in the event that acquisition of the rear portion of the property left the septic tank system inoperable. This report was relied upon by the County for its Order of Taking and the County was ordered to deposit the sum of \$279,700 in the Court Registry. This was done on April 10, 2006 and this date became the "Date of Taking."

The property owner presented the County with its appraisal, done by Nick Clarizio, just prior to the Order of Taking hearing. Mr. Clarizio's initial report was dated January 5, 2006 and concluded to a value of \$665,400. This valuation broke down as follows:

Land	\$80,300
Improvements	161,700
Cost to Cure	109,300
Damages	<u>314,100</u>
	\$665,400

In January 2007, Mr. Clarizio updated his report through the Date of Taking and concluded to a value of \$683,600, broken down as follows:

Land	\$86,400
Improvements	173,800

Cost to Cure	109,300
Damages	<u>314,100</u>
	\$683,600

In both Clarizio reports, the cost to cure figure is the property owner's estimated cost to connect to the City of Largo sewer. The damages figure is based on the assertion that increased noise levels will be experienced at the Humberstone property due to the airport improvements. The improvement project for which the Humberstone property was acquired included a 930' runway extension. The Humberstone property lies just southwest of the runway extension. Mr. Clarizio opined that increased noise levels will affect the highest and best use of the remainder and limit the property's use by commercial tenants.

In October 2008, the Court set the case set for trial on April 20, 2009. In preparation for trial the parties agreed to exchange trial appraisal reports. To that end Pinellas County directed Dan Richardson to update his report through the Date of Taking. Once the property was acquired in April 2006, the existing improvements were demolished and the County was able to investigate whether there were septic tank drainfields located on the property acquired. No evidence of the existence of any drainfield was found on the property acquired. The County is also aware that today, nearly three years after the Date of Taking, the remainder property continues to operate on the previously existing septic tank system. Consequently, Mr. Richardson's appraisal value went down to reflect that no cost to cure was necessary, but went up to reflect increased land values as of the Date of Taking. His updated conclusion of value was:

Land	\$65,700
Improvements	166,300
Net Damages/Cost to Cure	<u>1,000</u>
	\$233,300

Ms. Humberstone obtained the services of a new appraiser, Greg Johnson. Mr. Johnson's opinion of value was \$520,000, broken down as follows:

Land Improvements	\$192,000
Severance Damages	<u>328,000</u>
	\$520,000

Mr. Johnson's severance damages were based on two issues: (1) the cost to connect to sewer (\$112,000) and (2) increased noise (\$216,000).

The Mediated Settlement Agreement sets the value of the property acquired at \$425,000. The attorneys' fees are \$41,349.00 and the costs agreed to are \$61,255.00. I have practiced eminent domain law for nearly 19 years and have tried several cases. It is my opinion that the settlement agreement reached at Mediation is cost effective and recommend Board approval. Under present Florida statutory eminent domain law, Pinellas County is responsible for the property owners' attorneys' fees and its costs for its experts. The attorneys' fees are calculated under a statutory formula based on the benefit obtained for the client. The costs

liability is irrespective of the outcome of the case. If the matter had gone to trial, the County will also be liable for statutory interest on the difference between the initial deposit and the final judgment. The statutory interest rates for the years in question are:

2006	9%
2007	11%
2008	11%
2009	8%

If we had gone to trial, the property owner could have relied upon either the Clarizio or Johnson reports. The worst case scenario, if the jury had agreed with the testimony of either appraiser is set forth below.

	<u>Johnson</u>	<u>Clarizio</u>
Value of Acquisition	\$520,000	\$683,600
Attorney's Fees (Helinger)	79,299	120,975
Statutory Interest	75,430	126,783
Estimated Additional Costs (Humberstone)	30,000	30,000
Estimated Additional Costs (County)	50,000	50,000
Estimated Additional Attorneys' Fees (County)	<u>50,000</u>	<u>50,000</u>
	\$774,729	\$1,061,358

If we had gone to trial and won, the County would still have exposure for its costs and fees plus the additional costs incurred by Ms. Humberstone, for a total estimated at \$130,000.

None of the three appraisers diverged greatly on their opinions of the value of the land and improvements acquired. The difference is how the appraisers viewed the impact of the acquisition on the remainder property, otherwise known as severance damages. The County's appraiser, Dan Richardson, essentially found none. It is my opinion that this is a credible position. We know today that the septic tank system is still operable and there is no evidence that any of the drainfield was located on the property acquired. Mr. Richardson's position that there is no noise impact is based on a noise study done by the St. Petersburg-Clearwater International Airport, independent of this litigation. This study was done by Wyle Labs over the course of three years and was finalized in 2007. The study analyzed noise impacts on the lands surrounding the airport, not just the Humberstone property. The study essentially concludes that noise was at its highest in 2004. The study projected noise levels through 2010 and opined that due to decreases in air traffic, federal requirements related to aircraft fleet mix, and differing airport operations, there would be no increase in noise at the Humberstone property. If we had gone to trial, the authors of the Wyle study would have been witnesses in our case. The property owners argued that it is just not credible to extend the main runway 920' closer to their property and not increase the noise levels experienced. While I appreciate the authority of the Wyle report, I do not underestimate the impact of the property owner's arguments on a jury, particularly when the jury would conduct a physical view of the property and would hear whatever noise is out there.

Pursuant to Florida law, the jurors would have been instructed that they could come back with a verdict on the County's number, the property owner's number or anywhere in between. It is extremely rare for a jury to adopt either parties' exact number. However, the more polarized the positions, i.e., no severance damages versus damages, the more common it is to see verdicts closer to one side than the other. That being said, it is impossible to predict exactly how a jury will decide.

Based on the analysis set forth above, it is my opinion that the mediated Settlement Agreement eliminates risk cost effectively and is in the best interests of Pinellas County.

RECOMMENDATION

It is respectfully recommended that the Pinellas County Board of County Commissioners approve the Mediated Settlement Agreement and authorize me to execute all documents necessary to proceed to a Final Judgment.

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, IN
AND FOR PINELLAS COUNTY, FLORIDA

CASE NO. 06-2019-CI-21

PINELLAS COUNTY, a political
Subdivision of the State of Florida

Petitioner,

v.

Patricia S. Humberstone, as Trustee,


Respondent.

MEDIATED SETTLEMENT AGREEMENT

At a Mediation Conference held on the 27th day of February, 2009, the parties reached the following Settlement Agreement subject to the approval of the Pinellas County Commission.

1. Defendant will pay to Respondent, Patricia S. Humberstone, Trustee the sum of \$425,000.00 in full settlement of all claims for compensation in this cause including statutory interest.
2. Petitioner shall pay attorney's fees in the amount of \$41,349.00.
3. Petitioner shall pay Respondent's expert's fees, costs and expenses in the amount of \$61,255.00.
4. Counsel for Plaintiffs will submit to the Court for signature a mutually approved form of final judgment of this matter as soon as practical hereafter.
5. Respondent has a credit of \$279,700.00 and will deposit in the Court Registry the balance due of \$247,904.00 within 30 days of the actual date of receipt by Respondent's counsel a conformed copy of the aforesaid final judgment from the Court.
6. The Court will retain jurisdiction herein solely as to the matter of to enforce the terms of the final judgment.
7. Attached hereto is an addendum to this agreement: ___ yes ___X___ no
8. THIS AGREEMENT (AND ANY ADDENDUM, IF ANY) CONTAIN(S) ALL OF THE AGREEMENTS OF THE PARTIES, AND EVERY PART OF EVERY AGREEMENT.


Attorney for Respondent

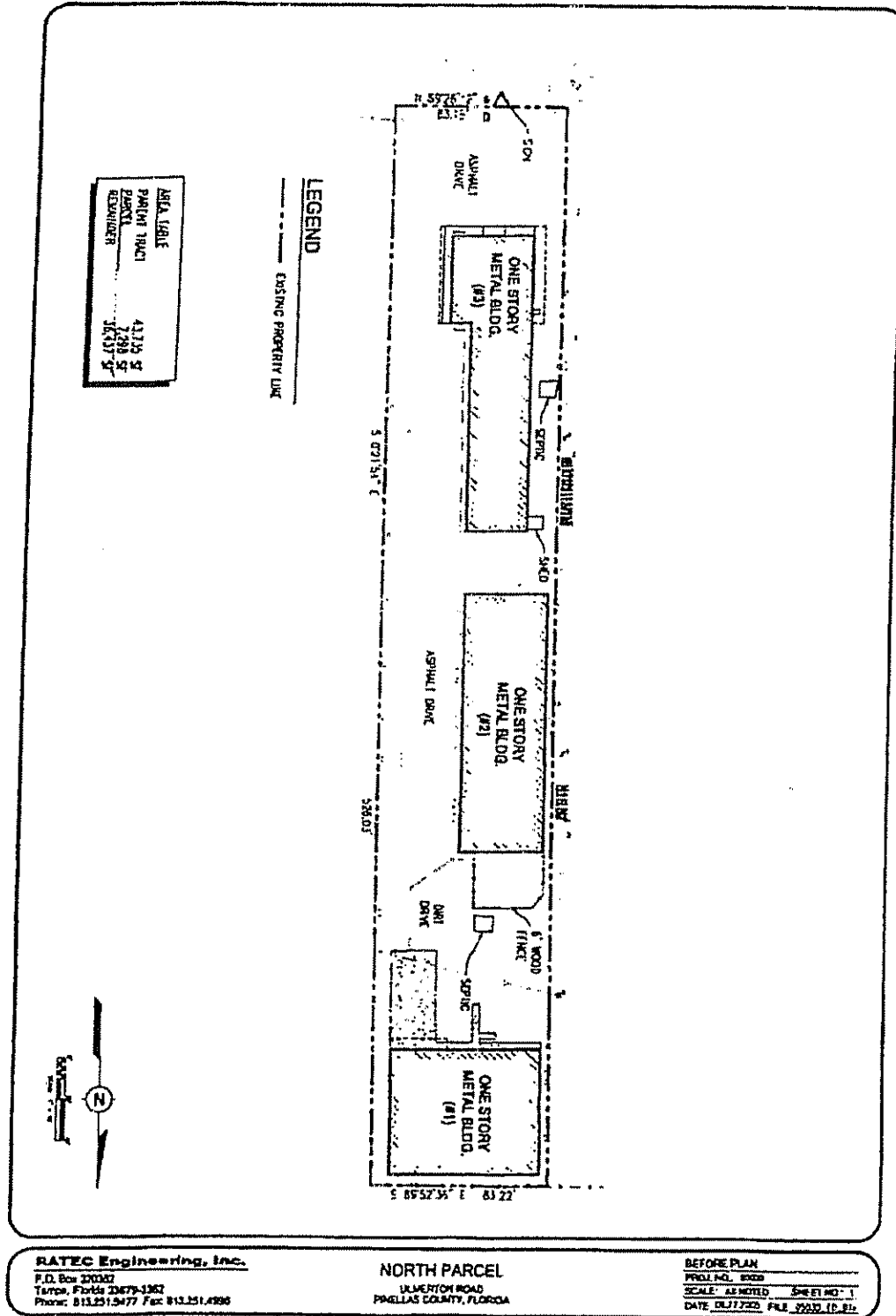

Attorney for Petitioner


Respondent, Patricia S. Humberstone, Trustee

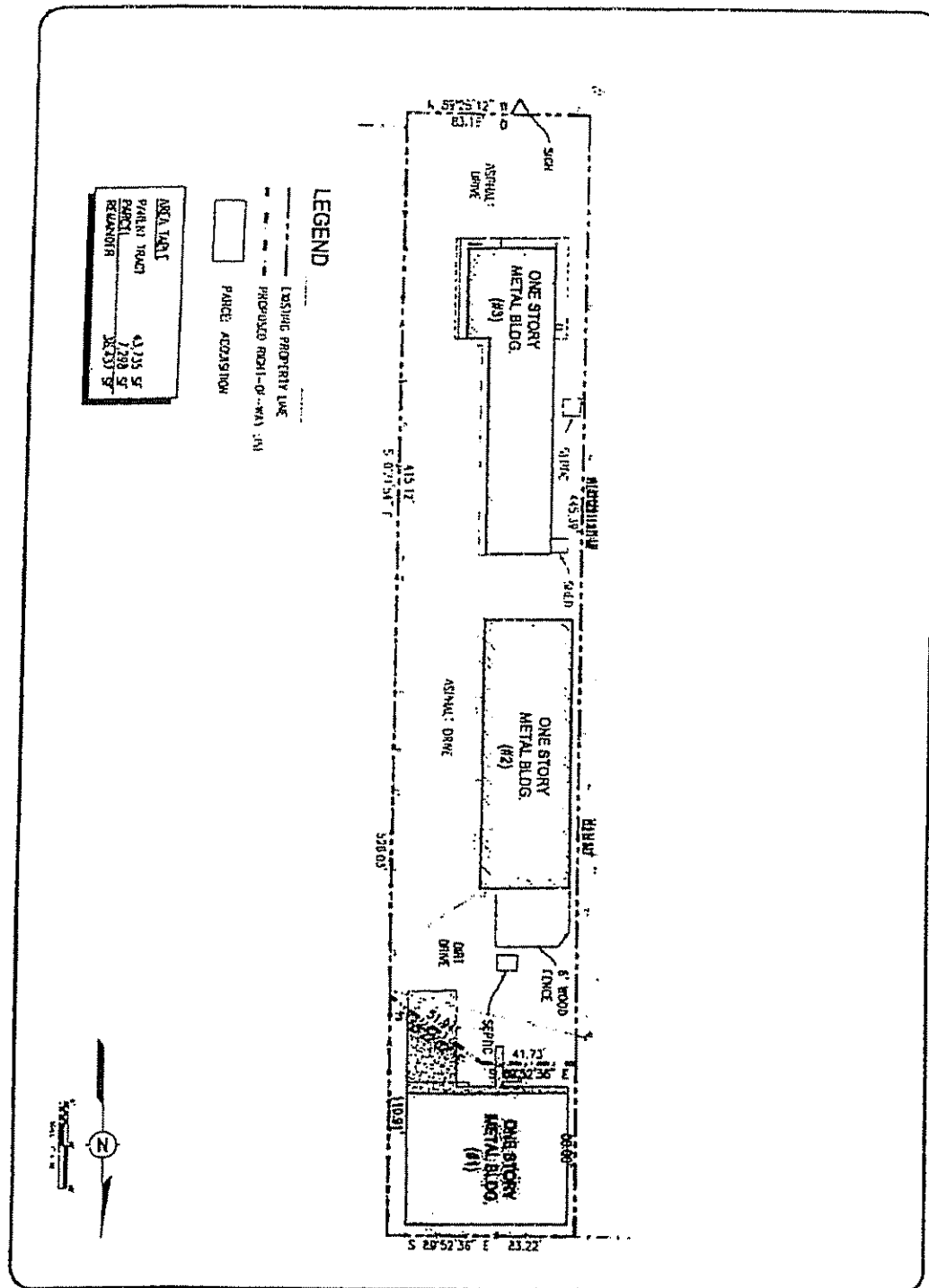

Petitioner


Mediator, Lawrence S. Gendzier

Before Plan



Before Plan with Take

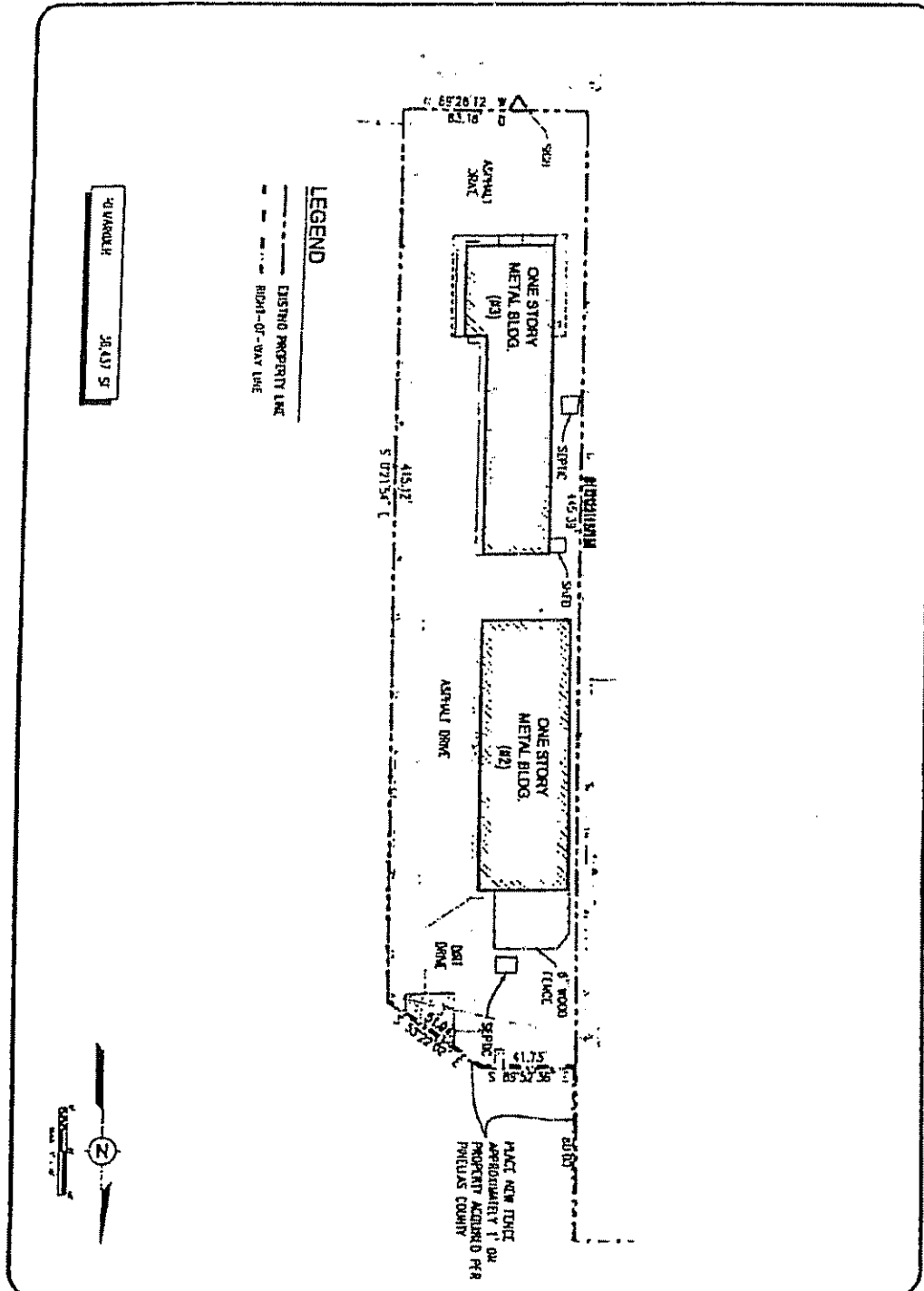


RATEC Engineering, Inc.
P.O. Box 320362
Tampa, Florida 33679-3262
Phone: 813.251.9477 Fax: 813.251.4998

NORTH PARCEL
ULVERTON ROAD
PINELLAS COUNTY, FLORIDA

BEFORE PLAN WITH ACQUISITION
PROJ NO.: 05030
SCALE: AS NOTED SHEET NO: 7
DATE: 09.27.2005 FILE: 05030.ID 01s

After Plan



RATEC Engineering, Inc.
P.O. Box 320062
Tampa, Florida 33679-3062
Phone: 813.251.9477 Fax 813.251.4996

NORTH PARCEL
J. L. MERTON ROAD
PINELLAS COUNTY, FLORIDA

AFTER PLAN
PROJ. NO. 10000
SCALE ARMORED SHEET NO. 3
DATE: 01.27.2003 FILE: 0762 ID 5: