

Lee County Board of County Commissioners

Agenda Item Summary

Blue Sheet No. 20020508

1. REQUESTED MOTION:

Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$10,000.00, for Parcel 1564, Veterans Memorial Parkway Extension, from Surfside Boulevard to Chiquita Boulevard, Project No. 5020, pursuant to the terms and conditions set forth in the Purchase Agreement; authorize Chairman on behalf of the BoCC to execute Purchase Agreement if offer is accepted by Seller; authorize the Division of County Lands to handle and accept all documentation necessary to complete this transaction and payment of all recording fees.

WHY ACTION IS NECESSARY: The Board must formally authorize the making of a binding offer to a property owner pursuant to F.S. §73.015 prior to initiation of condemnation proceedings.

WHAT ACTION ACCOMPLISHES: Makes binding offer to property owner as required by F.S. §73.015, as amended.

2. DEPARTMENTAL CATEGORY: 06

COMMISSION DISTRICT #: 1

C6A

3. MEETING DATE:

06-04-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON

TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE 73.125
 - ORDINANCE
 - ADMIN.
 - OTHER Resolution of Necessity
Blue Sheet No. 20020418

6. REQUESTOR OF INFORMATION

- A. COMMISSIONER
- B. DEPARTMENT Independent Division
- C. DIVISION County Lands TLM 5-10-02
- BY: *Karen L.W. Forsyth, Director* *KLF*

7. BACKGROUND:

The Division of County Lands has been requested by the Department of Transportation to acquire property that is necessary for the Veterans Memorial Parkway Extension, from Surfside Boulevard to Chiquita Boulevard, Project No. 5020.

This acquisition consists of a vacant non-waterfront property, further identified as Lots 1 and 2, Block 4853, Cape Coral, Unit 71, (Strap Number 33-44-23-C2-04853.0010).

F.S. §73.015, as amended, requires the County to submit a binding offer to the property owner prior to the initiation of condemnation proceedings. The County obtained an appraisal dated March 31, 2002, performed by Woodward S. Hanson, MAI, CCIM, CRE, indicating a value of \$9,000.00. The binding offer to the property owner, Duane Swenson, Trustee of the Swenson Living Trust dated June 26, 1996, is for \$10,000.00. Should the property owner agree to accept this offer, condemnation proceedings will not be required. If the property owner elects not to accept this offer, then condemnation proceedings may be commenced.

Staff is of the opinion that the purchase price increase of \$1,000 above the appraised value can be justified considering the costs associated with condemnation proceedings estimated to be between \$2,000 - \$4,000, excluding land value.

Staff recommends the Board approve the Requested Motion.

Funds are available in Account No. 20502030721.50.6110
 20 - Capital Projects
 5020 - Veterans Memorial Parkway Surfside to Chiquita
 307 - Transportation Capital Improvement
 21 - Cape Coral Capital
 50.6110 - Land

ATTACHMENTS:
 Purchase and Sale Agreement
 In-House Title Search
 Appraisal Letter
 Sales History

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A	B	C	D	E	F				G
Department Director	Purchasing or Contracts	Human Resources	Other DOT	County Attorney	Budget Services				County Manager
					OA	OM	RISK	GC	
<i>K. Forsyth</i>			<i>5/17/02</i>	<i>5/20/02</i>	<i>5/20/02</i>	<i>5/20/02</i>	<i>5/20/02</i>	<i>5/20/02</i>	<i>PK</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY
 COUNTY ADMIN.
5-17-02
335
 COUNTY ADMIN.
 FORWARDED TO: *BL*
5/20 330

By CO. ATTY.
5/17/02
 12:50 PM
 CO. ATTY.
 FORWARDED TO:
577-0230

This document prepared by
Division of County Lands
Project: Veterans Memorial Pkwy Ext. #5020
Surfside Blvd to Chiquita Blvd
Parcel: 1564
STRAP No.: 33-44-23-C2-04853.0010

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE
IN LIEU OF CONDEMNATION PROCEEDINGS

THIS AGREEMENT for purchase and sale of real property is made this ____ day of _____, 2002, by and between Duane Swenson, Trustee of the Swenson Living Trust dated June 26, 1996, hereinafter referred to as SELLER, whose address is 23056 Alsea Highway, Philomath, Oregon 97370, and Lee County, a political subdivision of the State of Florida, hereinafter referred to as BUYER.

WITNESSETH:

1. **AGREEMENT TO PURCHASE AND TO SELL:** SELLER agrees to sell and BUYER agrees to purchase, subject to the terms and conditions set forth below, a parcel of land consisting of 11,250 square feet, more or less, and located at 2402 SW 17th Place, Cape Coral, FL 33914, and more particularly described in "Exhibit A" attached hereto and made a part hereof, hereinafter called "the Property." This property is being acquired for the Veterans Memorial Parkway Extension, Surfside to Chiquita Boulevard Project, hereinafter called "the Project", with the SELLER'S understanding that the property, if not voluntarily sold, would have been condemned by BUYER through the exercise of its eminent domain powers.

2. **PURCHASE PRICE AND TIME OF PAYMENT:** The total purchase price ("Purchase Price") will be Ten Thousand and 00/100 (\$10,000.00), payable at closing by County warrant. The Purchase Price is mutually agreeable to both the SELLER and BUYER and represents the voluntary sale and purchase of the property in lieu of BUYER's condemnation.

3. **EVIDENCE OF TITLE:** BUYER will obtain at BUYER'S expense an American Land Title Association Form B Title Commitment and provide title insurance Owner's Policy in the amount of \$10,000.00, from a title company acceptable to BUYER. The commitment will be accompanied by one copy of all documents that constitute exceptions to the title commitment. The commitment will also show title to be good and marketable with legal access, subject only to real estate taxes for the current year, zoning and use restrictions imposed by governmental authority, and restrictions and easements common to the area.

4. **CONDITION OF PROPERTY; RISK OF LOSS:** BUYER has inspected the Property and, except as is otherwise provided herein, accepts the Property in the condition inspected. Any loss and/or damage to the Property occurring between the date of this offer and the date of closing or date of possession by BUYER, whichever occurs first, will be at SELLER'S sole risk and expense. However, BUYER may accept the damaged property and deduct from the purchase price any expenses required to repair the damage, or BUYER may cancel this Agreement without obligation.

5. **SELLER'S INSTRUMENTS AND EXPENSES:** SELLER will pay for and provide:

- (a) A statutory warranty deed, and an affidavit regarding liens, possession, and withholding under FIRPTA in a form sufficient to allow "gap" coverage by title insurance;
- (b) utility services up to, but not including the date of closing;
- (c) taxes or assessments for which a bill has been rendered on or before the date of closing;
- (d) payment of partial release of mortgage fees, if any;
- (e) payment of delinquent City of Cape Coral assessments, if any;
- (f) SELLER'S attorney fees, if any.

6. **BUYER'S INSTRUMENTS AND EXPENSES:** BUYER will pay for:

- (a) Recording fee for deed;
- (b) survey, (if desired by BUYER).

7. **TAXES:** SELLER will be charged for Real Estate taxes and personal property taxes (if applicable) up to, but not including the date of closing.

This voluntary sale and purchase is considered by Florida law to be exempt from the payment of Documentary Stamp Taxes because this transaction was made under the threat of an eminent domain proceeding by the BUYER.

8. **DEFECTS IN TITLE AND LEGAL ACCESS:** Prior to closing, BUYER will have a reasonable time to examine the title and documents establishing legal access to the property. If title or legal access is found to be defective, BUYER will notify SELLER in writing of the defects and SELLER will make a prompt and diligent effort to correct such defects. If SELLER fails to make corrections within 60 days after notice, BUYER may elect to accept the Property in its existing condition with an appropriate reduction to the purchase price, or may terminate this Agreement without obligation.

9. **SURVEY:** BUYER may order the Property surveyed at BUYER's expense. SELLER agrees to provide access to the Property for such survey to be performed. If the survey shows a discrepancy in the size or dimensions of the Property, or shows encroachments onto the Property or that improvements located on the Property encroach onto adjacent lands, or if the survey identifies violations of recorded covenants and/or covenants of this Agreement, upon notice to the SELLER, the BUYER may elect to treat such discrepancies, violations and/or encroachments as a title defect.

10. **ENVIRONMENTAL AUDIT:** BUYER may perform or have performed, at BUYER's expense, an environmental audit of the Property. If the audit identifies environmental problems unacceptable to the BUYER, BUYER may elect to accept the Property in its existing condition with an appropriate abatement to the purchase price or BUYER may terminate this Agreement without obligation.

11. **ABSENCE OF ENVIRONMENTAL LIABILITIES:** The SELLER warrants and represents that the Property is free from hazardous materials and does not constitute an environmental hazard under any federal, state or local law or regulation. No hazardous, toxic or polluting substances have been released or disposed of on the Property in violation of any applicable law or regulation. The SELLER further warrants that there is no evidence that hazardous, toxic or polluting substances are contained on or emitting from the property in violation of applicable law or regulation. There are no surface impoundments, waste piles, land fills, injection wells, underground storage areas, or other man-made facilities that have or may have accommodated hazardous materials. There is no proceeding or inquiry by any governmental agency with respect to production, disposal or storage on the property of any hazardous materials, or of any activity that could have produced hazardous materials or toxic effects on humans, flora or fauna. There are no buried, partially buried, or above-ground tanks, storage vessels, drums or containers located on the Property. There is no evidence of release of hazardous materials onto or into the Property.

The SELLER also warrants that there have been no requests from any governmental authority or other party for information, notices of claim, demand letters or other notification that there is any potential for responsibility with respect to any investigation or clean-up of hazardous substance releases on the property. All warranties described herein will survive the closing of this transaction.

In the event the SELLER breaches the warranties as to environmental liability, SELLER agrees to indemnify and hold the BUYER harmless from all fines, penalties, assessments, costs and reasonable attorneys' fees resulting from contamination and remediation of the property.

12. **TIME AND BINDING AGREEMENT:** Time is of the essence for closing this transaction. The BUYER's written acceptance of this offer will constitute an Agreement for the purchase and sale of the Property and will bind the parties, their successors and assigns. In the event the BUYER abandons this project after execution of this Agreement, but before closing, BUYER may terminate this Agreement without obligation.

13. **DATE AND LOCATION OF CLOSING:** The closing of this transaction will be held at the office of the insuring title company on or before 60 days from the date this Agreement is made. The time and location of closing may be changed by mutual agreement of the parties.

14. **ATTORNEYS' FEES:** The prevailing party in any litigation concerning this Agreement will be entitled to recover reasonable attorneys' fees and costs.

15. **REAL ESTATE BROKERS:** SELLER hereby agrees to indemnify and hold the BUYER harmless from and against any claims by a real estate broker claiming by or through SELLER.

16. **POSSESSION:** SELLER warrants that there are no parties in possession other than SELLER unless otherwise stated herein. SELLER agrees to deliver possession of Property to BUYER at time of closing unless otherwise stated herein.

17. **TYPEWRITTEN/HANDWRITTEN PROVISIONS:** Typewritten and handwritten provisions inserted herein or attached hereto as addenda, and initialed by all parties, will control all printed provisions in conflict therewith.

18. **SPECIAL CONDITIONS:** Any and all special conditions will be attached to this Agreement and signed by all parties to this Agreement.

WITNESSES:

SELLER:

Duane Swenson, Trustee (DATE)
of the Swenson Living Trust
dated June 26, 1996

CHARLIE GREEN, CLERK

BUYER:

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY: _____
DEPUTY CLERK (DATE)

BY: _____
CHAIRMAN OR VICE CHAIRMAN

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

COUNTY ATTORNEY (DATE)

EXHIBIT "A"

Veterans Memorial Parkway Extension,
Surfside to Chiquita Boulevard, Project No. 5020

Parcel 1564

Lots 1 and 2, Block 4853, Cape Coral Unit 71, according to the map or plat thereof filed and recorded in the Office of the Clerk of the Circuit Court, in Plat Book 22, Page 88, Public Records of Lee County, Florida.

Department of Public Works
Division of County Lands

Page 1 of 2

Updated In House Title Search

Search No. 21557/A
Date: January 18, 2000
Parcel: 1564
Project: Veterans Memorial
Parkway #4034

To: James M. Jerrell
Property Acquisition Agent

From: David M. White, CLS
Real Estate Title Examiner



STRAP: 33-44-23-C2-04853.0010

An update has been requested of In House Title Search No. 21557/A which covers the period beginning January 1, 1940, at 8:00 a.m. and is now complete through ~~December 28, 1999~~, at 5:00 p.m.
4/29/2002

Subject Property: Lots 1 and 2, Block 4853, Cape Coral Unit 71, according to the map or plat thereof filed and recorded in the Office of the Clerk of the Circuit Court, in Plat Book 22, Page 88, Public Records of Lee County, Florida.

Title to the subject property is vested in the following:

Duane Swenson, Trustee of the Swenson Living Trust dated June 26, 1996

By that certain instrument dated November 5, 1996, recorded November 25, 1996, in Official Record Book 2766, Page 2619, Public Records of Lee County, Florida.

Subject to:

1. Easement Dedication as shown on subject plat: "The Owners of this property do hereby dedicate easements along each boundary of each homesite for county drainage and for public utilities, said easements not to exceed 6 feet each side of said boundaries."
2. The City of Cape Coral has sewer, water, seawall, stormwater and lot mowing assessments. The assessments shown in this search, if any, are hereby limited to only that which the City of Cape Coral has filed in the Public Records of Lee County, Florida, which contains the property description, Name of Owner and lien amount. The City of Cape Coral should be contacted for any other assessment information. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.
3. Twelve foot (12') easement along the Westerly lot line as shown on the Plat.

Updated In House Title Search
Search No. 21557/A
Date: January 18, 2000
Parcel: 1564
Project: Veterans Memorial
Parkway #4034

4. Reservation of rights of all phosphate by the United States of America in patents contained in Deed Book 121, Page 282, Public Records of Lee County, Florida.

²⁰⁰¹
Tax Status: ~~1999~~ Ad Valorem Taxes are PAID IN FULL.
(The end user of this report is responsible for verifying tax and/or assessment information.)

The Division of County Lands has made a diligent search of the Public Record. However, this report contains no guarantees nor warranty as to its accuracy.

April 2, 2002

Teresa Mann
Property Acquisition Agent
Lee County Division of County Lands
P.O. Box 398
Fort Myers, Florida 33902-0398

SUBJECT: Market Value Appraisal
Project No. 5020, Parcel 1564
2402 SW 17th Place
Cape Coral, Lee County, Florida 33914
Integra Southwest Florida File No. 02-02-05-1564

Dear Ms. Mann:

Integra Realty Resources - Southwest Florida is pleased to transmit the summary report of a complete appraisal that was prepared on the referenced property. The purpose of this appraisal is to develop an opinion of the market value of the Fee Simple estate of the property as of March 31, 2002, the effective date of the appraisal. The attached report sets forth the data, research, analyses, and conclusions for this appraisal.

The report has been prepared in conformity with the *Uniform Standards of Professional Appraisal Practice (USPAP)* and the *Code of Professional Ethics and Standards of Professional Appraisal Practice* of the Appraisal Institute. Our opinion of market value is premised upon the Assumptions and Limiting Conditions contained within this report. The definition of market value is in Addendum B.

The property is a vacant, unimproved parcel of land containing an area of approximately 0.2600 acres/11,250 square feet and having a highest and best use for single family residential development.

Based on the analyses and conclusions in the accompanying report, and subject to the definitions, assumptions, and limiting conditions expressed therein, it is our opinion that the market value of the Fee Simple estate of the property, as of March 31, 2002, is:

NINE THOUSAND DOLLARS
(\$9,000).

LOCAL EXPERTISE...NATIONALLY

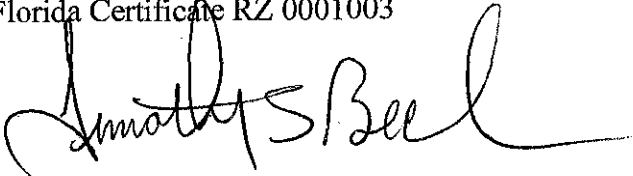
Teresa Mann
April 2, 2002
Page 2

If you have any questions or comments, please contact the undersigned. Thank you for the opportunity to be of service.

Respectfully submitted,



Woodward S. Hanson, MAI, CCIM, CRE
State Certified General Real Estate Appraiser
Florida Certificate RZ 0001003



Timothy S. Becker, Analyst
State Registered Assistant Real Estate Appraiser
Florida Certificate RI 0007079

5-Year Sales History

Parcel No. 1564

Veterans Memorial Parkway Extension,
Surfside to Chiquita Boulevard, Project No. 5020

Grantor	Grantee	Sale Date	Purchase Price	Arms Length Y/N
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No Sale in the Past 5 Years