

**Lee County Board of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20021491**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:**

Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$1,900.00, for Parcel 164, Palmetto Extension, Project No. 4073, 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 #:** 2 AND 5

*C6H*

**3. MEETING DATE:**

*01-28-2003*

**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. 20020762 and Interlocal Agreement Blue Sheet No. 20020586

**6. REQUESTOR OF INFORMATION**

- A.
- B. DEPARTMENT Independent Division
- C. DIVISION County Lands MSN 1-6-03
- BY Karen L.W. Forsyth, Director *K. Forsyth*

**7. BACKGROUND:**

The Division of County Lands has been requested by the Department of Transportation and the City of Fort Myers to acquire property that is necessary for the Palmetto Extension, Project No. 4073. This acquisition consists of vacant property, further identified as part of 3570 Martin Court, Ft. Myers, FL (STRAP Number 19-44-25-06-00005.0120)

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 November 4, 2002, performed by J. Lee Norris, MAI SRA, indicating a value of \$1,400.00. The binding offer to the property owners, Moses C. Walker & Mozelle Walker, now known as Mozelle Kelly, is for \$1,900.00. Should the property owners agree to accept this offer, condemnation proceedings will not be required. If the property owners elect not to accept this offer, then condemnation proceedings may be commenced.

Staff is of the opinion that the purchase price increase of \$500.00 above the appraised value can be justified considering the costs associated with condemnation proceedings, estimated between \$1,500 - \$3,000 excluding land value increases and attorney fees.

Staff recommends the Board approve the Requested Motion.

Funds are available in City of Fort Myers Acct # 310-4315-541-6100

**ATTACHMENTS:**  
Purchase and Sale Agreement  
In-House Title Search  
Appraisal Letter  
Sales History  
City Engineer Approval

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	RISK	GC	
<i>K. Forsyth</i>		N/A	<i>1/8/03</i>	<i>John J. Judson 1-13-03</i>	<i>1/13/03</i>	<i>1/13/03</i>	<i>1/13/03</i>	<i>1-13-03</i>	<i>[Signature]</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty  
Date: *1/8/03*  
Time: *2:45*  
Forwarded To:  
*Co. ADM*  
*1/13/03 10AM*

RECEIVED BY  
COUNTY ADMIN. *EW*  
*1-13-03*  
*10:45*  
COUNTY ADMIN.  
FORWARDED TO: *[Signature]*  
*1/14 11:45*

This document prepared by  
Lee County Division of County Lands  
Project: Palmetto Extension Project  
Parcel: 164  
STRAP No.: 19-44-25-06-00005.0120

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 \_\_\_\_\_, 20\_\_\_\_ by and between **Moses C. Walker, a \_\_\_\_\_ person and Mozelle Walker, now known as Mozelle Kelty, a married person**, hereinafter referred to as SELLER, whose address is \_\_\_\_\_, 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 **0.03 acres** more or less, and located at **3570 Martin Court** 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 Palmetto Extension, 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 **One thousand and nine hundred and no/100 dollars (\$1,900.00)**, 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 **\$1,900.00**, 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) 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CHARLIE GREEN, CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK (DATE)

SELLER:

\_\_\_\_\_  
**Moses C. Walker** (DATE)

\_\_\_\_\_  
**Mozelle Walker** (DATE)  
Now known as **Mozelle Kelty**

BUYER:

LEE COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
CHAIRMAN OR VICE CHAIRMAN

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY

\_\_\_\_\_  
COUNTY ATTORNEY (DATE)

**Exhibit "A"**

August 19, 2002

**DESCRIPTION**

**PARCEL IN  
SECTION 19, TOWNSHIP 44 SOUTH, RANGE 25 EAST  
LEE COUNTY, FLORIDA**

**PARCEL NO. 164**

**STRAP NO. 19-44-25-06-00005.0120**

A tract or parcel of land located in Lot 5, W. Stanley Hanson's Highland Subdivision as recorded in Plat Book 1 at Page 57 of the Public Records of Lee County, Florida lying in Section 19, Township 44 South, Range 25 East, Lee County, Florida, which tract or parcel is described as follows:

From the southeast corner of the Northeast Quarter (NE-1/4) of said section run N 00° 05' 21" W along the east line of said section for 974.49 to the southeast corner of said Lot 5; thence run S 88° 58' 04" W along the south line of said Lot 5 for 130.00 feet to the Point of Beginning.

From said Point of Beginning continue S 88° 58' 04" W along said south line for 11.00 feet; thence run N 00° 32' 04" W for 117.47 feet; thence run N 88° 58' 04" E for 9.98 feet; thence run S 01° 01' 56" E for 117.46 feet to the Point of Beginning.

**SUBJECT TO** easements, reservations, restrictions and right-of-ways of record.

Parcel contains 1,232 square feet, more or less.

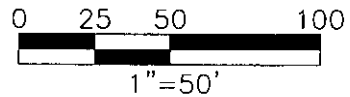
Bearings hereinabove mentioned are based on the east line of the Northeast Quarter (NE-1/4) of Section 19, Township 44 South, Range 25 East, Lee County Florida as being N 00° 05' 21" W.

*Mark G. Wentzel*

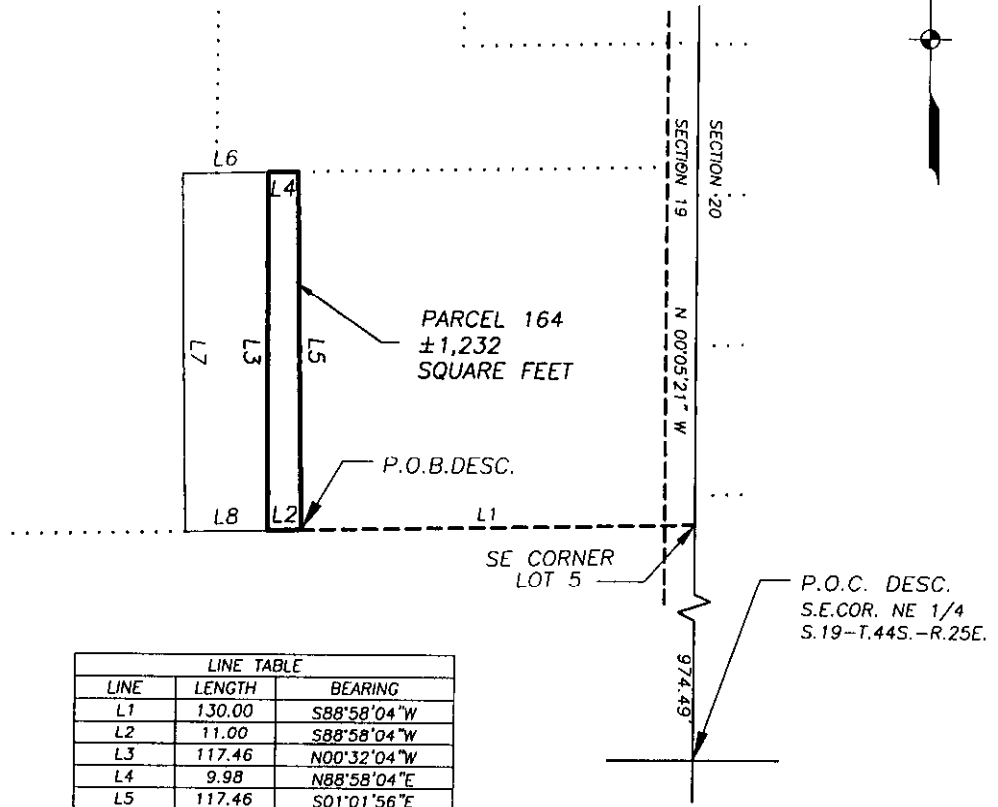
Mark G. Wentzel (For The Firm LB-642)  
Professional Land Surveyor  
Florida Certificate No. 5247

Page 1 of 2

# Exhibit "A"



u:\1999\321\surveying\autocad\legal\Sketches\Desc164.dwg



PARCEL 164  
±1,232  
SQUARE FEET

P.O.B. DESC.

SE CORNER  
LOT 5

P.O.C. DESC.  
S.E. COR. NE 1/4  
S. 19-T. 44S.-R. 25E.

LINE TABLE		
LINE	LENGTH	BEARING
L1	130.00	S88°58'04"W
L2	11.00	S88°58'04"W
L3	117.46	N00°32'04"W
L4	9.98	N88°58'04"E
L5	117.46	S01°01'56"E
L6	28.23	N88°58'04"E
L7	117.46	N01°01'56"W
L8	27.21	S88°58'04"W

### LEGEND

- COR. = CORNER
- DESC. = DESCRIPTION
- FD. = FOUND
- L.B. = LAND SURVEYOR BUSINESS
- MON. = MONUMENT
- O.R. = OFFICIAL RECORD
- P.B. = PLAT BOOK
- PG. = PAGE
- P.O.B. = POINT OF BEGINNING
- P.O.C. = POINT OF COMMENCEMENT
- R. = RANGE
- T. = TOWNSHIP

### NOTES:

1. SUBJECT TO ALL EASEMENTS, RESERVATIONS, RESTRICTIONS AND RIGHTS OF WAY OF RECORD.
2. BEARING ARE BASED ON THE EAST LINE OF THE NE 1/4 OF SECTION 19, TOWNSHIP 44 SOUTH, RANGE 25 EAST, LEE COUNTY FLORIDA AS BEING N00°05'21"W.
3. PARCEL CONTAINS 1,232 SQUARE FEET MORE OR LESS.

Page 2 of 2

**THIS IS NOT A SURVEY**

*Mark C. Wentzel*

MARK C. WENTZEL (FOR THE FIRM-L.B.#642)  
PROFESSIONAL SURVEY AND MAPPER  
FLORIDA CERTIFICATE NO. 5247

DATE SIGNED: 8/21/02

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF FLORIDA LICENSED SURVEYOR AND MAPPER.

PARCEL NO. 164  
PARENT STRAP NO. 19-44-25 06-00005.0120  
PART OF LOT 5  
W. STANLEY HANSONS  
HIGHLAND SUBDIVISION  
(PLAT BOOK 1, PAGE 57, LEE COUNTY PUBLIC RECORDS)  
SECTION 19, T. 44 S., R. 25 E.  
CITY OF FORT MYERS  
LEE COUNTY, FLORIDA

**JOHNSON ENGINEERING**

3501 DEL PRADO BOULEVARD  
SUITE 110  
CAPE CORAL, FLORIDA 33904  
PHONE (941) 334-0046  
FAX (941) 541-1383  
E.B. #642 & L.B. #642

### SKETCH TO ACCOMPANY DESCRIPTION

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
08-19-02	19991321	19-44-25	1"=50'	1



**Division of County Lands**

**In House Title Search**

Search No. 22229

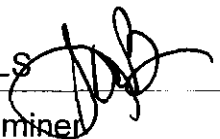
Date: September 12, 2002

Parcel: 164

Project: Palmetto Avenue Extension

Project #4073

To: Michele S. McNeill, SRWA  
Property Acquisition Agent

From: Shelia A. Bedwell, CLS  
Real Estate Title Examiner 

STRAP: 19-44-25-06-00005.0120

This search covers the period of time from January 1, 1940, at 8:00 a.m. to September 3, 2002, at 5:00 p.m.

**Subject Property:** See attached Schedule "X"

Title to the subject property is vested in the following:

**Moses C. Walker and Mozelle Walker, husband and wife**

by that certain instrument dated June 27, 1979, recorded July 16, 1979, in Official Record Book 1362, Page 2351, Public Records of Lee County, Florida.

**Subject to:**

1. Title to oil, gas and mineral rights and leases on subject property is specifically omitted from this report.
2. Mortgage executed by Moses C. Walker and Mozelle Walker, husband and wife, in favor of Jim Walter Homes, Inc., dated June 27, 1979, recorded July 16, 1979, in Official Record Book 1362, Page 2352, Public Records of Lee County, Florida.
3. Fifteen foot public road easement along the North boundary, as described in Official Record Book 1362, Page 2351, Public Records of Lee County, Florida.
4. Judgment against Moses Walker recorded September 13, 1985, in Official Record Book 1803, Page 3745, Public Records of Lee County, Florida. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.
5. Judgment against Moses Walker recorded October 23, 1986, in Official Record Book 1875, Page 3992, Public Records of Lee County, Florida. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.

## Division of County Lands

### In House Title Search

Search No. 22229

Date: September 11, 2002

Parcel: 164

Project: Palmetto Avenue Extension

Project #4073

6. Judgment against Moses Walker, recorded December 23, 1986, in Official Record Book 1886, Page 4610, Public Records of Lee County, Florida. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.
7. Judgment against Mozelle L. Kelty, also known as Mozelle Kelty and Moses Walker, recorded December 18, 2001, in Official Record Book 3542, Page 2714, as re-recorded March 21, 2002, in Official Record Book 3604, Page 3549, Public Records of Lee County, Florida. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.

**Tax Status:** Tax certificates 96-004614, 97-004672, 98-005247, 99-005593, 00-004324, 01-004742 and 02-004830 are outstanding for tax years 1995 through 2001.

*(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.**

# Carlson, Norris and Associates, Inc.

APPRAISAL • CONSULTATION • REALTORS

C. William Carlson, MAI, SRA  
State Certified General Appraiser #0000667  
ccarl1@hotmail.com

J. Lee Norris, MAI, SRA  
State Certified General Appraiser #0000643  
leenor56@hotmail.com

November 22, 2002

Lee County/City of Fort Myers  
P.O. Box 398  
Fort Myers, Florida 33902  
Attention: Robert Clemens, Project Acquisition Manager

Re: Vacant Land - Partial Take  
Parcel 164 - Palmetto Avenue Extension  
Fort Myers, Florida

Dear Mr. Clemens:

In accordance with your request, we have inspected the above referenced property for the purpose of estimating the market value of the parent tract, the remainder parcel thereby yielding a value for the part taken. This parcel is within the alignment of the Palmetto Extension Right of Way.

The parent tract contains road frontage along Martin Court south of Dr. Martin Luther King Jr. Boulevard. The parent tract contains 4,488 square feet. The remainder parcel is estimated to contain 3,256 square feet. Based upon documentation provided to the appraiser the part taken contains 1,232 square feet.

This analysis has utilized the most current market value definition which is contained within the attached appraisal report. The site is being valued under market conditions existing as of the last date of physical inspection of the property. As per your request this is a **Complete-Summary Appraisal Report** which presents summary data and analysis that was used in the appraisal process to develop the appraiser's opinion of value. As this is a complete appraisal, the departure provision of the Uniform Standards of Professional Appraisal Practice was not invoked.

Based on market conditions existing as of the date of appraisal and in consideration of the property as it existed on this date, it is our opinion the subject property (a partial take parcel) warranted a market value in fee simple ownership on November 4, 2002 of:

**ONE THOUSAND FOUR HUNDRED DOLLARS ..... (\$1,400.00).**

This value represents all property rights to be acquired including all legally compensable diminution in value to the remaining land.

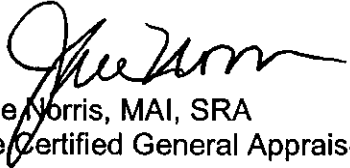
This report is made subject to certain assumptions and limiting conditions as set forth in the body of the appraisal. The analyst was engaged by the Lee County Government in association with the City of Fort Myers to prepare the appraisal of the subject property.

Mr. Robert Clemens  
November 22, 2002  
Page 2

If you should have any questions relating to this or any other matter, please do not hesitate to call upon us.

Respectfully submitted,

CARLSON, NORRIS AND ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "J. Lee Norris", written over the printed name.

J. Lee Norris, MAI, SRA  
State Certified General Appraiser #0000643

# 5-Year Sales History

Parcel No. 164

Palmetto Avenue Extension Project, No. 4073

**NO SALES in PAST 5 YEARS**

**NOTE: Sale(s) relate to "parent tract" of the subject parcel.**

S:\POOL\LANDDFRM\HISTORY.WPD

12/30/2002 MON 15:25 FAX 239 479 8391

LEE COUNTY-COUNTY LANDS

007



**LEE COUNTY**  
SOUTHWEST FLORIDA

**BOARD OF COUNTY COMMISSIONERS**

239.479.8505  
239.479.8391 FAX

Writer's Direct Dial Number: \_\_\_\_\_

Bob Jones  
District One

**VIA FAX TO 332-8604**

Douglas R. St. Conny  
District Two

December 30, 2002

Ray Judah  
District Three

Saeed Kazerni, P.E. City Engineer  
City of Fort Myers  
P.O. Box 2217  
Fort Myers, FL 33902-2217

Andrew W. Coy  
District Four

John E. Albion  
District Five

Donald D. Stilwell  
County Manager

**RE: PARCEL 164, PALMETTO EXTENSION PROJECT**  
Request for review and sign-off on acquisition proposal

James G. Yaeger  
County Attorney

Dear Saeed,

Diana M. Parker  
County Hearing Examiner

The appraisal for parcel 164 has been reviewed and approved by County Staff and we are preparing to request Board approval to make a binding offer. Below is the relevant data for this parcel. Please review and approve on behalf of the City as well as confirm that funds are available. Thank you.

Sincerely,

Michele S. McNeill, SR/WA  
Property Acquisition Agent

**Parcel 164**

Property Owner: Moses C. Walker and Mozelle Walker  
Appraiser: Carlson Norris and Associates, Inc.  
Appraisal Date: 11/4/02  
Appraised Amount: \$1,400  
**Binding Offer Amount: \$1,900**

Binding Offer Approved:

Funds are available in account:

Saeed Kazerni, P.E.  
City Engineer, City of Fort Myers

S:\POOL\Palmetto Ext\Correspondence\164 City Engineer Approval.wpd