

Lee County Board of County Commissioners
Agenda Item Summary

DATE CRITICAL
Blue Sheet No. 20040805

1. **REQUESTED MOTION:**

ACTION REQUESTED: Approve request for reconveyance of unused Drainage Easement, approve Agreement to Relocate Existing Drainage and accept replacement drainage easements at 8269 and 8281 Cypress Drive South, Fort Myers, Florida.

WHY ACTION IS NECESSARY: Board approval is required to reconvey unused interests in County real estate and to accept new or replacement real estate interests conveyed to the County.

WHAT ACTION ACCOMPLISHES: Releases an unused easement and authorizes the relocation of existing drainage.

2. **DEPARTMENTAL CATEGORY:** 12
COMMISSION DISTRICT #3

C12C

3. **MEETING DATE:**

06-29-2004

4. **AGENDA:**

CONSENT

ADMINISTRATIVE

APPEALS

PUBLIC

WALK ON

TIME REQUIRED:

5. **REQUIREMENT/PURPOSE:**
(Specify)

STATUTE §255.22, F.S. & Ch. 125

ORDINANCE

ADMIN. CODE

OTHER

6. **REQUESTOR OF INFORMATION:**

A. **COMMISSIONER**

B. **DEPARTMENT** County Attorney

C. **DIVISION** Land Use

BY: John J. Fredyma

John J. Fredyma
Assistant County Attorney

7. **BACKGROUND:** Joseph P. Kakareka and Annette Browne have requested a reconveyance pursuant to §255.22, F.S., of a Drainage Easement originally given to the County in 1988 for drainage over the westerly 40 feet of their property at 8269 Cypress Drive South. The easement has never been used. Drainage exists on a neighboring lot. Existing drainage is to be rechanneled by the two abutting property owners to move the existing drainage location to the common lot line between the properties, rather than bisecting a lot at 8281 Cypress Drive South, making it otherwise unusable. The property owners will be fully responsible for the costs of permitting, relocation and recording fees.

County Staff has reviewed the request to relocate the existing drainage and does not object to the proposed relocation.

- Attachments: 1) Agreement to Relocate Existing Drainage
2) Perpetual Stormwater Drainage Easement
3) Release of Easement
4) Sketch of proposed drainage easement relocation.

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
				<i>Joseph P. Kakareka</i>	OA	OM	RISK	GC	<i>John J. Fredyma</i> 6-16-04

10. **COMMISSION ACTION:**

- APPROVED
 DENIED
 DEFERRED
 OTHER

ATTN: INFORMATION TO CO. ADMIN
6/15/04

RECEIVED BY
COUNTY ADMIN: *PK*
6/15/04
2:45 pm SLT
COUNTY ADMIN
FORWARDED TO: *PK*
6-16-04
6/16/04

5

Agreement to Relocate Existing Drainage

This Agreement to Relocate Existing Drainage (referred to as the "Agreement") is made this ____ day of _____, 2004, by and between **JOSEPH P. KAKAREKA** and **ANNETTE BROWNE**, whose address is 8269 Cypress Drive South, Fort Myers, Florida 33912 (referred to together as "*Kakareka*"); **MELISSA L. WILLIAMS**, whose address is 8341 Cardinal Road, Fort Myers, Florida 33912 (referred to as "*Williams*"); and **LEE COUNTY**, a political subdivision of the State of Florida whose address is c/o County Attorney's Office, P.O. Box 398, Fort Myers, Florida 33902 (referred to as the "*County*").

WHEREAS, Kakareka is the owner of property located at 8269 Cypress Drive South, Fort Myers, Florida, legally described as:

Lot 13, Block 91, San Carlos Park, Unit No. 7, according to the plat thereof as recorded in Deed Book 315, Page 134 of the Public Records of Lee County, Florida; and

WHEREAS, Williams is the owner of property located at 8341 Cardinal Road, Fort Myers, Florida, legally described as:

Lot 14, Block 91, San Carlos Park, Unit No. 7, according to the plat thereof as recorded in Deed Book 315, Page 134 of the Public Records of Lee County, Florida; and

WHEREAS, County is the holder of rights and a drainage easement dated August 8, 1988 and recorded in the Public Records of Lee County, Florida in Official Records (O.R.) Book 2071, Page 3966 which easement is described as follows:

The westerly 40-feet of Lot 13, Block 91, San Carlos Subdivision, Unit No. 7, in Section 16, Township 46 South, Range 25 East, Lee County, Florida and recorded in Deed Book 315, Page 134 of the Public Records; and

WHEREAS, a County drainage ditch currently exists on the Williams property, diagonally bisecting the property, running from the southwest corner to the northeast corner; and

WHEREAS, the drainage ditch on Williams' property has been present and functioning on the Williams' property for a period in excess of twenty-one years; and

WHEREAS, Kakareka has requested a reconveyance of a drainage easement at O.R. Book 2071, Page 3966 pursuant to §255.22, Florida Statutes (F.S.), to remove the drainage easement from the westerly 40 feet of their property, but is willing to create a new drainage easement in favor of the County over the easterly 20 feet of the property for this purpose; and

WHEREAS, Williams seeks to relocate the County's existing drainage ditch currently diagonally bisecting her property to the westerly 20 feet of the property and create a new drainage easement in favor of the County for this purpose; and

WHEREAS, Kakareka and Williams have each agreed to provide the County with a new easement to facilitate the relocation of the County's existing drainage ditch to the common lot line between Kakareka and Williams; and

WHEREAS, Kakareka and Williams are each willing to convey to Lee County a replacement 20-foot wide easement for drainage purposes, which easements will be located along the common lot line between Kakareka and Williams' property, forming a replacement drainage easement with a combined total width of 40 feet (referred to as the "*Replacement Easement*"); and

WHEREAS, Kakareka and Williams agree to obtain all necessary permits and perform all construction necessary to relocate the County's existing drainage ditch to the area of the Replacement Easement.

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained in this Agreement, the sufficiency of which is acknowledged by both parties hereto, the parties do hereby agree as follows:

1. The recitals set forth above are true and correct and incorporated into this Agreement.
2. Prior to the Board of County Commissioners' (referred to as the "*Board*") consideration or approval of this Agreement, Kakareka and Williams will each deliver to the County Attorney's Office, a Replacement Easement in conformity with the form attached to this Agreement as Exhibit "A." The Replacement Easements will be held in trust pending approval by the Board. Thereafter, the Replacement Easements may be recorded in the Official Records of the Public Records of Lee County, Florida.
3. In conjunction with the review and approval of the Replacement Easements and prior to acceptance by the County, Kakareka and Williams must each submit assurances, reasonably acceptable to the County Attorney's Office, that Kakareka and Williams each holds sufficient right, title and interest to convey the Replacement Easements. Assurance may take the form of either an attorney opinion of title, prepared in accordance with the standards for opinions promulgated by the Florida Bar, or title insurance. The purpose of this provision is to establish that the County will receive an interest in the easement area superior to all rights and interests except that of the fee title holder.

4. Kakareka and Williams agree to construct replacement drainage within the area of the Replacement Easement, designed to:
 - (a) accommodate the existing flow rates and capacity of the County's existing drainage; and
 - (b) be inspected and approved by the Lee County Department of Transportation and the County's Division of Natural Resources; and
 - (c) comply with all applicable Lee County Land Development Code (LDC).
5. During construction of the replacement drainage Kakareka and Williams agree not to damage or otherwise suspend the function of County's existing drainage.
6. Upon the successful inspection and approval of the replacement drainage, the County will release and convey to the owners the following: A County Deed (in statutory form) to Kakareka reconveying (pursuant to §255.22, F.S.) the County's interest in the drainage and utility easement at O.R. Book 2071, Page 3966; and a County Deed (in statutory form) to Williams releasing of all right title and interest in the County's existing drainage ditch that currently diagonally bisects Williams' property.
7. The parties understand and agree that any drainage facilities constructed in accordance with this Agreement must meet SFWMD and County regulatory permitting requirements.
8. Kakareka and Williams agree, at their sole expense, to repair, relocate or reconstruct any public utilities, including but not limited to, water, sewer, gas, electric, telephone and cable, affected by relocation of the County's existing drainage.
9. Kakareka and Williams are responsible for obtaining all required permits and approvals necessary to achieve compliance with applicable county, state and federal regulations.
10. Kakareka and Williams agree to be responsible for all recording costs and fees associated with this relocation of the County existing drainage.
11. The parties understand and agree that no impact fee credits will be issued for any of the drainage improvements contemplated by this Agreement.
12. The County hereby authorizes its County Manager, or his designee, to accept and execute all documents on behalf of the County and to do all other things prudent and necessary to effectuate the terms of this Agreement and the exchange of real property interests contemplated herein.

- 13. This Agreement, including all exhibits, constitutes the entire agreement of the parties and may be modified only by a written instrument executed with the same formality.
- 14. This Agreement is binding upon and inures to the benefit of the parties, their successors and assigns.
- 15. This Agreement will be interpreted and construed in accordance with the laws of the State of Florida.
- 16. This Agreement will be effective on the date of signing by the Chairman or Vice-Chairman of the Board of County Commissioners of Lee County.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals intending to be bound as of the day and year first written above.

Signed, sealed and delivered
in the presence of

[1st Witness' Signature - as to both]

[Type or Print Name]

Joseph P. Kakareka

[2nd Witness' Signature - as to both]

[Type or Pint Name]

Annette Browne

COUNTY OF _____ :
STATE OF _____ :

The foregoing instrument was acknowledged before me this ___ day of _____, 2004, by Joseph P. Kakareka and Annette Browne. They are both personally known to me, or have produced _____ as identification

[stamp or seal]

[Signature of Notary]

[Typed or printed name]

[Title]

[Serial number, if any]

[1st Witness' Signature]

Melissa L. Williams

[Type or Print Name]

[2nd Witness' Signature]

[Type or Print Name]

COUNTY OF _____ :
STATE OF _____ :

The foregoing instrument was acknowledged before me this ____ day of _____,
2004, by Melissa L. Williams. She is personally known to me, or has produced _____
_____ as identification

[stamp or seal]

[Signature of Notary]

[Typed or printed name]

[Title]

[Serial number, if any]

Approved and accepted for and on behalf of Lee County, Florida, this ____ day of _____, 2004.

ATTEST:
CHARLIE GREEN, CLERK

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

BY: _____
Deputy Clerk

[Type or Print Name]

BY: _____
Chairman

Approved as to form by:

County Attorney's Office

This Instrument Prepared By:

Lee County Attorney's Office
2115 Second Street
Fort Myers, Florida 33901

Strap Number: _____

THIS SPACE RESERVED FOR RECORDING

PERPETUAL STORMWATER DRAINAGE EASEMENT

This Easement Grant is given this ___ day of _____, 200__
by and between _____, owner,
whose address is _____ (Grantor) and LEE
COUNTY, a political subdivision of the State of Florida, whose address is
P.O. Box 398, Fort Myers, Florida 33902-0398 (Grantee) as follows:

1. In consideration of the sum of One and xx/100 dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, a drainage easement in, over and across that portion of Grantor's property legally described in Exhibit "A".

2. Grantee has the right and authority to construct and maintain stormwater drainage facilities, including the installation of pipe, within the easement area in accordance with appropriate permits issued for construction and maintenance. The Perpetual Stormwater Drainage Easement is not limited to any one diameter size, type or number of connections to other stormwater lines or systems for providing drainage.

3. Grantee also has the right and authority to remove or trim any roots, trees or other vegetation or structures, including fencing, within the easement area in order to properly install the stormwater drainage facilities.

4. Grantor may use the easement area for landscaping (except trees), walkway, drainage or similar uses, provided no structures, such as sheds, carports, garages or other buildings, are constructed within the easement area.

5. Title to any drainage facilities constructed in the easement area will remain in the Grantee, its successors or assigns.

6. Grantor warrants that subject to any existing public roadway or utility easements, Grantor is in lawful possession of the subject property free and clear of all liens and encumbrances, except as stated herein, and has the right and power to convey this easement.

7. County/Grantee, by accepting this Easement, agrees to all the terms contained herein.

8. This easement is binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the GRANTOR has caused this document to be signed on the date and year first above written.

_____	BY: _____
[1 st Witness' Signature]	[Grantor's Signature]
_____	_____
[Type or Print Name]	[Type or Print Name]
_____	_____
[2 nd Witness' Signature]	[Title]

[Type or Print Name]	

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____ 200__, by _____ who produced the following as identification _____ or is personally know to me, and who did/did not take an oath.

[stamp or seal]

[Signature of Notary]

[Typed or Printed Name]

Approved and accepted for and on behalf of Lee County, Florida, this _____ day of _____, 20_____.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM

BY: _____
Office of the County Attorney

This Instrument Prepared by:

Lee County Attorney's Office
P.O. Box 398
Fort Myers, FL 33902-0398
941/335-2236

STRAP Number: 16-46-25-07-00091.0110

This Space for Recording

RELEASE OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS that this Release of Easement is given this ____ day of _____, 2004, by **LEE COUNTY**, a political subdivision of the State of Florida, whose address is P.O. Box 398, Fort Myers, FL 33902 ("*County*"), to **JOSEPH P. KAKAREKA** and **ANNETTE BROWNE**, whose address is 8269 Cypress Drive South, For Myers, FL 33912, their heirs, successors and assigns (referred to together as "*Kakareka*").

WITNESSETH:

WHEREAS, recorded in Official Records (O.R.) Book 2071, Page 3966 of the Public Records of Lee County, Florida, is an Easement ("*Easement*") given to the County for water drainage purposes over, upon and across the land of Kakareka described as follows:

The westerly forty feet of Lot 13, San Carlos Subdivision, Unit 7, Block 91, Section 16, Township 46 South, Range 25 East, Lee County, Florida, as recorded in Deed Book 315, Page 134 of the Public Records of Lee County, Florida.;

and

WHEREAS, pursuant to Florida Statutes §255.22, Kakareka has filed a request asking Lee County to release and reconvey to them all right, title and interest in the Easement (which is no longer in use or necessary for the purposes for which it was granted); and

WHEREAS, it is the intent of LEE COUNTY to release to Kakareka all right, title and interest in the Easement recorded in O.R. Book 2071, Page 3966 of the Public Records of Lee County, Florida.

NOW, THEREFORE, for and in consideration of the sum of One and xx/100 Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the County hereby conveys, sets over, remises and releases to Kakareka, their successors and assigns, all right, title and interest in Easement recorded in recorded in O.R. Book 2071, Page 3966 of the Public Records of Lee County, Florida and described as follows:

The westerly forty feet of Lot 13, San Carlos Subdivision, Unit 7, Block 91, Section 16, Township 46 South, Range 25 East, Lee County, Florida, as recorded in Deed Book 315, Page 134 of the Public Records of Lee County, Florida.;

This Release of Easement is not intended to release any portion of a Perpetual Stormwater Drainage Easement of near or even date to be conveyed to the County by Kakareka, to the extent that the new Perpetual Stormwater Drainage Easement overlaps the Easement being released herein.

This Release of Easement applies only to the interest of Lee County and its Board of County Commissioners in the Easement herein described, and does not warrant the title or represent any state of facts concerning the title.

IN WITNESS WHEREOF the COUNTY has caused this Release of Easement to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said Board, the day and year first written above.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

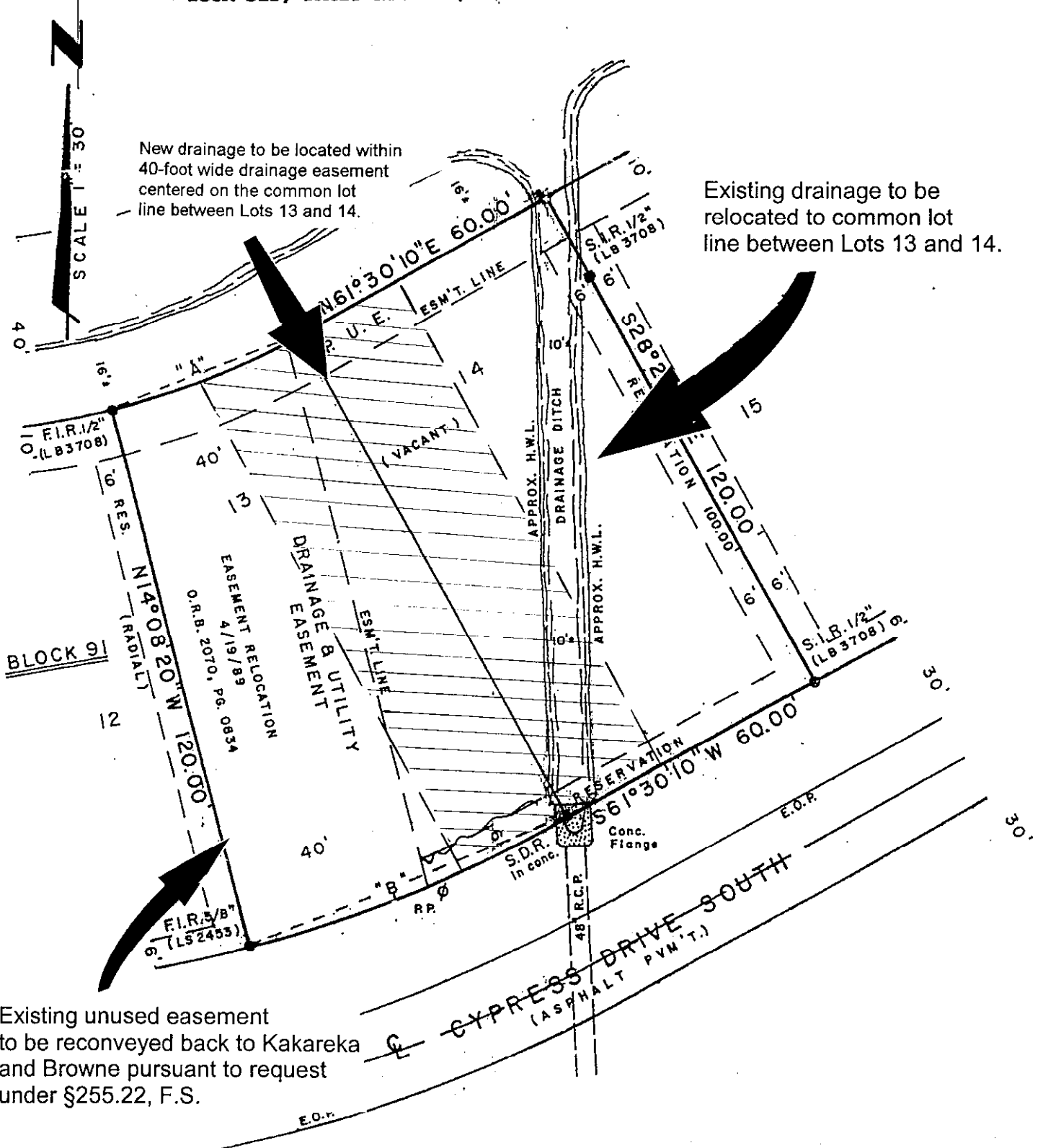
By: _____
John Albion, Chairman

APPROVED AS TO LEGAL FORM:

Office of County Attorney
John J. Fredyma
Assistant County Attorney

**SKETCH TO ACCOMPANY BLUE SHEET NO. 20040805
RELEASE OF UNUSED EASEMENT FOR DRAINAGE
AND RELOCATION OF EXISTING DRAINAGE TO
NEW DRAINAGE EASEMENT ON COMMON LOT LINE**

BOUNDARY SURVEY OF LOTS 13 & 14, BLOCK 91, SAN CARLOS PARK, UNIT NO. 7, AS RECORDED IN DEED BOOK 315, PAGES 122-158, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.



New drainage to be located within 40-foot wide drainage easement centered on the common lot line between Lots 13 and 14.

Existing drainage to be relocated to common lot line between Lots 13 and 14.

Existing unused easement to be reconveyed back to Kakareka and Browne pursuant to request under §255.22, F.S.