

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

Blue Sheet No. 20041028

1. REQUESTED MOTION:

ACTION REQUESTED: Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$45,000 for Parcel 203, Ten Mile Linear Park, Project No. 2001, pursuant to the Purchase Agreement; authorize the Division of County Lands to handle all documentation necessary to complete transaction.

WHY ACTION IS NECESSARY: The Board must authorize the making of a binding offer to a property owner prior to initiation of condemnation proceedings.

WHAT ACTION ACCOMPLISHES: Makes binding offer to property owner.

**2. DEPARTMENTAL CATEGORY: 06
COMMISSION DISTRICT # 2 and 5**

CGH

3. MEETING DATE:

08-24-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

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

- STATUTE *73 & 125*
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT *Independent*
- C. DIVISION *County Lands 8-6-04*
- BY: Karen L. W. Forsyth, Director *KLF*

7. BACKGROUND:

Negotiated for: Department of Construction and Design and the Division of Public Parks and Recreation

Interest to Acquire: Fee interest in 3.47 acres of property encumbered by the Ten Mile Canal.

Property Details:

Owner: Ronald C. Francisco, Trustee

Purchase Details:

Binding Offer Amount: \$45,000

Appraisal Information:

Company: Coastal Engineering Consultants, Inc., by William H. Reeve, III, MAI, SRA

Appraised Value: \$45,000

Staff Recommendation: Staff recommends the Board approve the Requested Motion.

Account: 20200118700.506110

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

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>K. Forsyth</i>			<i>PAP 8/10</i>	<i>John J. Reagin 8-11-04</i>	OA	OM	Risk	GC	<i>8/12/04</i>
					<i>8/14/04</i>	<i>8/14/04</i>	<i>8/12/04</i>	<i>8/12/04</i>	<i>8-10-04</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
 Date: *8/11/04*
 Time: *2:05*
 Forwarded To:
CE: KLF
8/11/04 3:04

RECEIVED BY
 COUNTY ADMIN:
8/11/04
4:35 pm SW
 COUNTY ADMIN
 FORWARDED TO: *PL*
8/12/04
3:30 pm

This document prepared by
Lee County Division of County Lands
Project: Ten Mile Linear Park Project 2001
Parcel: 203

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 _____, 2004 by and between Ronald C. Francisco, Trustee, 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 3.47 acres more or less, and located along Ten Mile Canal 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 Ten Mile Linear Park Project, No. 2001, 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 Forty five thousand and no/100 dollars (\$45,000.00), 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 \$45,000, 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:

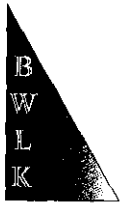
Ronald C. Francisco, Trustee (DATE)

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)



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

LEGAL DESCRIPTION

Ten Mile Linear Park
Parcel 203

A parcel of land in Section 30, Township 45 South, Range 25 East, Lee County, Florida, more particularly described as follows:

Begin at the northwest corner of Section 30, Township 45 South, Range 25 East, thence S.01°00'33"W. along the west line of said northwest quarter for 1322.35 feet to an intersection with the south line of the north half of the northwest quarter of said Section 30; thence N.88°57'51"E. along said south line for 115.50 feet to an intersection with the westerly right of way line of the Fort Myers Southern Railroad; thence N.01°07'03"W. along said westerly right of way line for 1322.23 feet to an intersection with the north line of the northwest quarter of the aforementioned Section 30; thence S.89°01'24"W. along said north line for 113.00 feet to the point of beginning.

Bean, Whitaker, Lutz & Kareh, Inc.
Certificate Of Authorization Number LB0004919

Date: 18 FEB 04

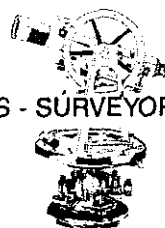
James R. Coleman
Registered Land Surveyor
Florida Certificate Number 3205

BWLK34377Parcel 203.doc

PRINCIPALS:

- WILLIAM E. BEAN, PSM, CHAIRMAN
- SCOTT C. WHITAKER, PSM, PRESIDENT
- JOSEPH L. LUTZ, PSM
- AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



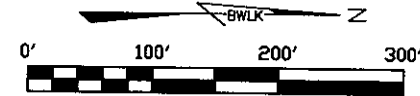
ASSOCIATES:

- TRACY N. BEAN, AICP
- CHARLES D. KNIGHT, PSM
- W. BRITT POMEROY, JR., PSM
- STEPHEN H. SKORUPSKI, PSM
- ELWOOD FINEFIELD, PSM
- JAMES A. HESSLER, PSM
- JAMES R. COLEMAN, PSM
- RUDOLF A. NORMAN, PE

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

OF
A PARCEL OF LAND
LYING IN
SECTION 30, TOWNSHIP 45 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

O.R. 3488, PG. 2682



SOUTH COMMERCIAL PARK
(UNRECORDED)

LOT 15

LOT 22

CAMELOT SUBDIVISION
P.B. 29, PG. 135

LOT 21

FORMER SEABOARD ALL FLORIDA RAILROAD R/W, D.B. 111, PG. 146

IDD CANAL EASEMENT
D.B. 91, PG. 306

P.O.B.
NW CORNER,
SEC. 30-45-25

S 01°00'33" E 1322.35'

WEST LINE, NW 1/4, SEC. 30-45-25

(203)

3.47 ACRES±

PARCEL TM-3
D.B. XX, PG. XXX

N 01°07'03" W 1322.23'

WESTERLY RIGHT OF WAY LINE FORT MYERS SOUTHERN RAILROAD

FORT MYERS SOUTHERN
RAILROAD R/W
D.B. 71, PG. 327

CENTERLINE OF RAILROAD TRACKS

N 88°57'51" E
115.90'
SOUTH LINE, N. 1/2, NW
1/4, SEC. 30-45-25

S 89°01'24" W
113.00'
NORTH LINE, NW
1/4, SEC. 30-45-25

LOT 7

LOT 8

LOT 9

LOT 10

LOT 11

LOT 12

LOT 13

CENTRAL METROPOLITAN COMMERCIAL CENTER
P.B. 45, PG. 82

SURVEYORS NOTES

1. THE ATTACHED SKETCH IS INTENDED TO BE A GRAPHIC REPRESENTATION OF THE LANDS DESCRIBED HEREON AND IS NOT TO BE CONSIDERED A SURVEY.
2. THE BEARINGS SHOWN HEREON ARE BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF FLORIDA, NORTH AMERICAN DATUM OF 1983 (NAD83), 1990 ADJUSTMENT.
3. REPRODUCTIONS OF THE ATTACHED SKETCH ARE NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL.

BEAN, WHITAKER, LUTZ & KAREH, INC.
CERTIFICATE OF AUTHORIZATION NUMBER LB0004919

James R. Coleman
JAMES R. COLEMAN
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATE NUMBER 3205

DATE: 12/22/04

Bean, Whitaker, Lutz & Kareh, Inc. (18 4818)

CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041-McCORROR BOULEVARD, FORT MYERS, FLORIDA 33919-8810 (239) 481-1331

PCL-203.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (5-1-J)
02-16-04	34377	J.R.C.	1" = 100'	1 OF 1	30-45-25

Memorandum From The Office Of County Lands

To: Michele S. McNeill SR/WA
Property Acquisition Agent

From: Kenneth Pitt
Title Examiner



Update of Search # 20165/B, Parcel TM-3 from 5-3-1991 to 3-24-2004.

No information found of record to change the findings of the original search. This search affecting the North ½ of the West ½ of the Northwest ¼ of Section 30, Township 45 South, Range 24 East, Lee County, Florida.

In summary Fannie H. Davis who acquired the Northwest ¼ of the aforementioned Section by Letters Patent recorded in Deed Book 44 Page 449, Public Records of Lee County, Florida. Fannie Davis never conveyed the land in West of the railroad right of way in the NW ¼ of the NW ¼. Said railroad right of way was established in the NW ¼ by deed recorded in Deed Book 71 page 327, Public Records of Lee County, Florida; said right of way's westerly line was established as the easterly line of an Iona Drainage District Diversion Canal. However R.A. Henderson, Jr., acquired the land West of the railroad right of way in the Northwest ¼ by Tax Deed recorded in Deed Book 154 page 306, Public Records of Lee County, Florida. He then conveyed the subject property to J.J. Musselwhite by deed recorded in Deed Book 163 Page 277, Public Records of Lee County, Florida, subject to railroad in the NW ¼ of the NW ¼. Betty Musselwhite, a widow then conveyed to the subject property to B.B. Daniels and Evelyn Daniels, husband and wife by deed recorded in Deed Book 194 Page 228, Public Records of Lee County, Florida, subject to railroad and drainage rights of way. B. B. Daniels and Evelyn Daniels then conveyed the subject property, but less railroad and canal rights of way by deed recorded in Deed Book 256 Page 61, Public Records of Lee County, Florida. Subsequent deeds for the subject property, in the NW ¼ of the NW ¼, less and except railroad and drainage rights of way. Until a deed conveyed to Ronald Francisco recorded in Official Record Book 1926 Page 2661, Public Records of Lee County, Florida, where neither were less and excepted from the description. Francisco has not conveyed that strip of land West of railroad right of way in the NW ¼ of the NW ¼ by conveyance found of record.

Evelyn S. Daniels, survived her husband B.B. Daniels. Her will did not specifically devise the land west of the railroad right of way in the NW ¼, nor was it mentioned, she did however bequeath the rest and remainder of her property to Reverend E.S. Anderson, her will was recorded in Official Record Book 1781 Page 1344, Public Records of Lee County, Florida. Evelyn Daniels died a resident of Lee County, Florida on 3/27/1985. Reverend E.S. Anderson has not conveyed title to the land west of railroad right of way in the NW ¼ by conveyance found of record, nor have any surrogates proceedings been found in Lee County and is the presumed owner of that land west of the existing railroad right of way in the NW ¼ of Section 30, Township 45 South, Range 25 East. However this finding is further complicated as the land west of the existing railroad right of way in the S ½ of the NW ¼ and the N ½ of the SW ¼ has been given a STRAP designation 30-45-25-00-00008.002E, and taxes have been paid on said parcel since 1998. This portion of the property in question had the railroad and canal rights of way less and excepted in the chain of title until a deed from Morton Goldberg, Trustee, to Richard L. Purtz, Trustee, recorded in Official Record Book 2284 Page 138, Public Records of Lee County, Florida. Which specifically conveyed the land lying West of the railroad right of way in the S ½ of the NW ¼, even though the grantor had acquired property in that area less railroad right of way and drainage easements by deed recorded in Official Record Book 891 Page 700, Public Records of Lee County, Florida. Said parcel of land was later conveyed to L.M. Mintz, Trustee, by deed recorded in Official Record Book 2419 Page 3203, Public Records of Lee County, Florida and Mintz has not conveyed said land by instrument of record. So Mintz could have a potential claim in said parcel via adverse possession, as his rights to said land under the aforesaid conveyance is flawed.

It is also important to establish that the Iona Drainage District in its formation did not include any land in Range 25 East and in fact ended at the East line of Range 24 in its initial description. The original map of the entire Iona Drainage District Canal system reflects this as well. There is no instrument found of record conveying either fee ownership or easement rights of the Iona Drainage District in this Section of land.

CERTIFICATE OF VALUE

Item/Segment: N/A
State Road: N/A
County: Lee
Managing District: N/A
FAP No.: N/A
Parcel No.: 203

I certify to the best of my knowledge and belief, that:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, unbiased, professional analyses, opinions and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
4. My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
5. My analyses, opinions, or conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice, and the provisions of Chapter 475, Part II, Florida Statutes.
6. I have made a personal inspection of the property that is the subject of this report and I have afforded the property owner the opportunity to accompany me at the time of the inspection. I have made a personal field inspection of the comparable sales relied upon in making this appraisal. The subject and comparable sales relied upon in making this appraisal was as represented by the photographs as contained in this appraisal.
7. No persons other than those named herein provided significant professional assistance to the person signing this report.
8. I understand that this appraisal is to be used in connection with the acquisition of an existing drainage easement for a community park known as "Ten Mile Linear Park Project" to be constructed by Lee County Florida.
9. This appraisal has been made in conformity with appropriate State laws, regulations, policies and procedures applicable to appraisal of right-of-way for transportation purposes; and to the best of my knowledge, no portion of the property value entered on this certificate consists of items which are non-compensable under the established law of the State of Florida.
10. I have not revealed the findings or results of this appraisal to anyone other than the proper officials of Lee County and I will not do so until authorized by Lee County officials or until I am required by due process of law, or until I am released from this obligation my having publicly testified as to such findings.
11. Regardless of any stated limited condition or assumption, I acknowledge that this appraisal report and all maps, data, summaries, charts and other exhibits collected or prepared under this agreement shall become the property of the Department without restriction or limitation of their use.
12. Statements supplemental to this certification required by membership or candidacy in a professional appraisal organization are described on an addendum to this certificate and, by reference, are made a part hereof.

Based upon my independent appraisal and the exercise of my professional judgment, my opinion of the market value for the part taken, including net severance damages after special benefits, if any, of the property appraised as of the 22 day of June, 2004, is: \$45,000.

Market Value should be allocated as follows:

Land: \$ 45,000

Land Area (Ac/SF): 3.47 Ac

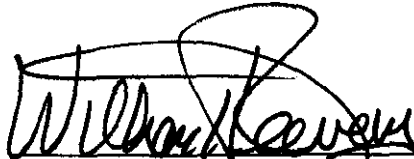
Improvements: \$ 0

Land Use: Drainage Easement

Net Damages &/or
Cost to Cure: \$ n/a

Total: \$ 45,000

06/30/2004
Date



Appraiser: William H. Reeve, III, MAUSRA
State Certified General Real Estate Appraiser RZ943

5-Year Sales History

Parcel No. 203

Ten Mile Linear Park Project, No. 2001

NO SALES in PAST 5 YEARS