

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

**Blue Sheet No. 20041029**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$80,000 for Parcel 204, 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**

*C6I*

**3. MEETING DATE:**

*08-24-2004*

**4. AGENDA:**

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

**6. REQUESTOR OF INFORMATION:**

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

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

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

**7. BACKGROUND:**

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

**Interest to Acquire:** Fee interest in 6.24 acres of property encumbered by the Ten Mile Canal.

**Property Details:**

**Owner:** George M. Lummis Estate

**Purchase Details:**

**Binding Offer Amount:** \$80,000

**Appraisal Information:**

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

**Appraised Value:** \$80,000

**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>H. Forsyth</i>			<i>DAO 8/10</i>	<i>John J. Redman 8-11-04</i>	<i>OA 8/12/04</i>	<i>OM 8/14/04</i>	<i>Risk 8/12/04</i>	<i>GC 8/12/04</i>	<i>W. Lummis 8-10-04</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty  
Date: *8/11/04*  
Time: *2:05*  
Forwarded To:  
*Cl. Hamm.*  
*8/11/04 3:21*

RECEIVED BY  
COUNTY ADMIN:  
*8/11/04*  
*4:33pm SC7*  
COUNTY ADMIN  
FORWARDED TO: *PL*  
*8/12/04*  
*5:30pm*

This document prepared by  
Lee County Division of County Lands  
Project: Ten Mile Linear Park Project 2001  
Parcel: 204

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 the Estate of George M. Lummis, deceased, 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 6.24 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 Eighty thousand and no/100 dollars (\$80,000.00), 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 \$80,000, 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) axes 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:

\_\_\_\_\_  
Personal Representative (DATE)  
Estate of George M. Lummis

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 - fmooffice@bwlk.net  
(Ph) 239-481-1331 (Fax) 239-481-1073

LEGAL DESCRIPTION

Ten Mile Linear Park  
Parcel 204

A parcel of land in Section 19, Township 45 South, Range 25 East, Lee County, Florida, more particularly described as follows:

Commence at the northwest corner of the southwest quarter of Section 19, Township 45 South, Range 25 East, thence S.01°27'04"E. along the west line of the southwest quarter of said Section 19 for 192.69 feet to an intersection with the south right of way line of Daniels Road and the point of beginning of the herein described parcel of land; thence continue S.01°27'04"E. along said west line for 2451.87 feet to an intersection with the south line of the southwest quarter of the aforementioned Section 19; thence N.89°01'24"E. along said south line for 113.00 feet to an intersection with the westerly right of way line of the Fort Myers Southern Railroad; thence N.01°33'33"W. along said westerly right of way line for 2458.15 feet to an intersection with the aforementioned south right of way line of Daniels Road, being a point on the arc of a circular curve concave to the northwest bearing S.04°48'10"E. from the radius point of said curve; thence southwesterly along the arc of said curve having for its elements a radius of 5834.58 feet and a central angle of 01°03'55" for 108.49 feet to the point of beginning

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

Date: 18 FEB 04

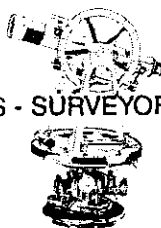
James R. Coleman  
Registered Land Surveyor  
Florida Certificate Number 3205

BWLK34377Parcel 204.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



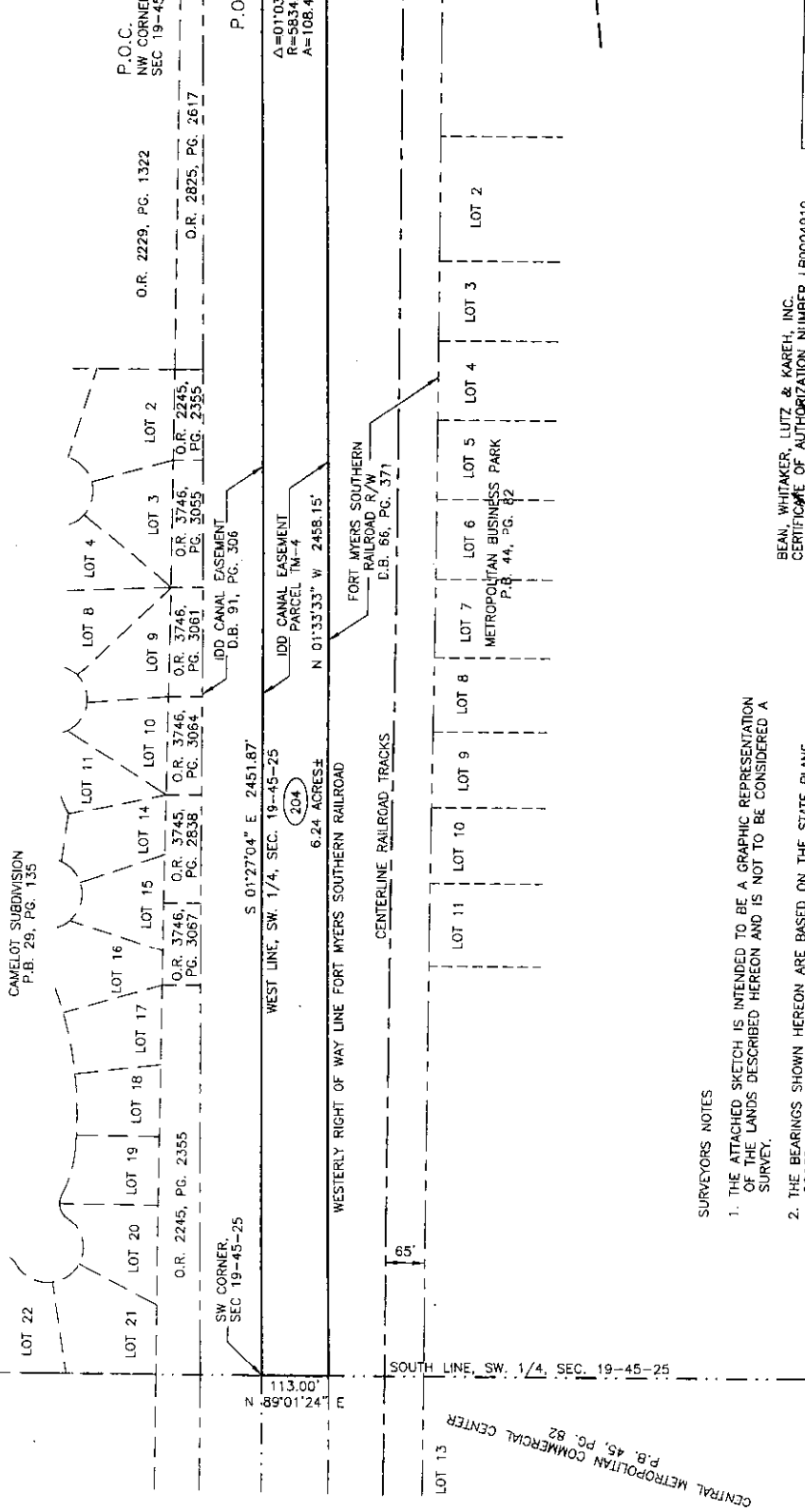
ASSOCIATES:

- 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

# Exhibit "A"

## SKETCH TO ACCOMPANY LEGAL DESCRIPTION

OF  
A PARCEL OF LAND  
LYING IN  
SECTION 19, TOWNSHIP 45 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA



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), 1980 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  
DATE: *10/1/04*

JAMES R. COLEMAN  
REGISTERED LAND SURVEYOR  
FLORIDA CERTIFICATE NUMBER 3205

**Bean, Whitaker, Lutz & Karch, Inc.** (LF 4019)  
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS  
1501-H MACBROOM BOULEVARD, FORT MYERS, FLORIDA 33904-6616 (239) 451-1331

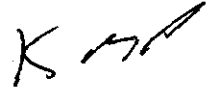
PCL-204.DWG  
DATE: 02-17-04 3:33:77  
SCALE: 1"=200'  
J.R.C.  
FILE NO. (S-I-P)  
19-45-25



# Memorandum From The Office Of County Lands

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

From: Kenneth Pitt  
Title Examiner



**Update of Search # 20166/C, Parcel TM-4 from 5-3-1991 to 3-24-2004.**

The only additional information found in the update of this search was the death of Standley B. Lummis, who died a resident of Lee County, Florida on 7-25-2002. Standley B. Lummis was one of the heirs of George M. Lummis, deceased. There are some inconsistencies in mapping however, the current Tax Map appears to show that the railroad property (19-45-25-00-00001.0000) extends to the westerly line of the section, but previous maps show the westerly (105' to 112'- varies) as Ten Mile Canal. The aerial maps of the Lee County Property Appraiser show that there is land between the westerly right of way line of the railroad and the westerly right of way line of the Ten Mile Canal.

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.: 204

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: \$80,000.

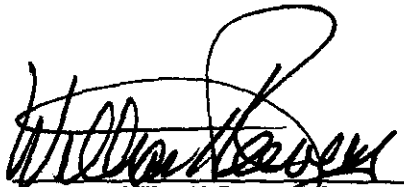
Market Value should be allocated as follows:

Land: \$ 80,000  
 Improvements: \$ 0  
 Net Damages &/or  
 Cost to Cure: \$ n/a  
 Total: \$ 80,000

Land Area (Ac/SF): 6.24 Ac

Land Use: Drainage Easement

06/30/2004  
 Date



Appraiser: William H. Reeve, MAI, SRA  
 State Certified General Real Estate Appraiser RZ943

# 5-Year Sales History

Parcel No. 204

Ten Mile Linear Park Project, No. 2001

**NO SALES in PAST 5 YEARS**