

Agenda Item Summary

**1. ACTION REQUESTED/PURPOSE:** Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$30,800 for Parcel 211D, 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.

**2. WHAT ACTION ACCOMPLISHES:** Makes binding offer to property owner prior to initiation of condemnation proceedings as required by Florida Statutes.

**3. MANAGEMENT RECOMMENDATION:** Management recommends Board approve the Action Requested.

4. Departmental Category: 6

**CLF**

5. Meeting Date:

**11-01-2005**

6. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

7. Requirement/Purpose: (specify)

- Statute **73 & 125**
- Ordinance
- Admin. Code
- Other

8. Request Initiated:

Commissioner \_\_\_\_\_  
 Department Independent  
 Division County Lands  
 By: Karen L.W. Forsyth, Director

9. Background:

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

**Interest to Acquire:** Fee interest in 60,400 square feet of property encumbered by the Ten Mile Canal.

**Property Details:**

**Owner:** Jack A. Freeman and Gertrude Freeman (3/4 interest) and Gertrude Freeman and Helene Rasmussen, Successor Trustees of the Jack A. Freeman Trust (1/4 interest)

**STRAP No.:** 07-45-25-00-00000.211D

**Purchase Details:**

**Binding Offer Amount:** \$30,800

In order to expedite acquisition efforts, staff recommends Board make a binding offer in the amount of \$30,800, and commence Eminent Domain procedures.

**Appraisal Information:**

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

**Appraised Value:** \$30,800

**Date of Appraisal:** September 9, 2005

**Staff Recommendation:** Staff recommends the Board approve the action requested.

**Account:** 20200118700.506110

**Attachments:** Purchase and Sale Agreement, In-House Title Search, Appraisal Certificate of Value, Sales History

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<i>H. Forsyth</i>			<i>10/18</i>	<i>Janet...</i>	Analyst	Risk	Grants	Mgr.	<i>Jaund...</i>
					<i>10/20/05</i>	<i>10/20</i>	<i>10/20/05</i>	<i>10/20/05</i>	<i>10-18-05</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty
Date: <i>10/10/05</i>
Time: <i>11:50am</i>
Forwarded To: <i>10/20/05</i>

RECEIVED BY COUNTY ADMIN: <i>CLW</i>
<i>10/20/05</i>
<i>3:25pm</i>
COUNTY ADMIN FORWARDED TO: <i>ML</i>
<i>10/20</i>
<i>5PM</i>

This document prepared by  
Lee County Division of County Lands  
Project: Ten Mile Linear Park Project 2001  
Parcel: 211D

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 \_\_\_\_\_, 2005 by and between Jack A. Freeman and Gertrude Freeman (3/4 interest) and Gertrude Freeman and Helene Rasmussen, Successor Trustees of the Jack A. Freeman Trust (1/4 interest), 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 60,400 square feet 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 Thirty thousand eight hundred and no/100 dollars (\$30,800.00), 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 the purchase price, 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:

\_\_\_\_\_  
Jack A. Freeman (DATE)

\_\_\_\_\_  
Gertrude Freeman (DATE)

\_\_\_\_\_  
Gertrude Freeman, Trustee (DATE)

\_\_\_\_\_  
Helene Rasmussen, 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)

# Exhibit "A"

## 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 211D

A parcel of land in Section 7, Township 45 South, Range 25 East, Lee County, Florida, being that portion of the south half of the north half of the south half of the northwest quarter of said Section 7 lying west of the Fort Myers Southern Railroad, together with that portion of the north half of the south half of the south half of the northwest quarter of said Section 7 lying west of the Fort Myers Southern Railroad, more particularly described as follows:

Commence at the southwest corner of the northwest quarter of Section 7, Township 45 South, Range 25 East, thence N.00°45'56"W. along the west line of the northwest quarter of said Section 7 for 330.05 feet to an intersection with the south line of the north half of the south half of the northwest quarter of said Section 7 and the point of beginning of the herein described parcel of land; thence continue N.00°45'56"W. along said west line for 660.10 feet to an intersection with the north line of the south half of the north half of the south half of the northwest quarter of said Section 7; thence N.88°53'06"E. along said north line for 91.25 feet to an intersection with the westerly right of way line of the Fort Myers Southern Railroad as described in Deed Book 66 at Page 414 of the public records of Lee County, Florida; thence S.00°48'32"E. along said right of way line for 660.14 feet to an intersection with the aforementioned south line of the north half of the south half of the south half of the northwest quarter of said Section 7; thence S.88°54'49"W. along said south line for 91.75 feet to the point of beginning.

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

Date: 15 JUN 05

James R. Coleman  
Registered Land Surveyor  
Florida Certificate Number 3205

BWLK34377 Parcel 211D.doc

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

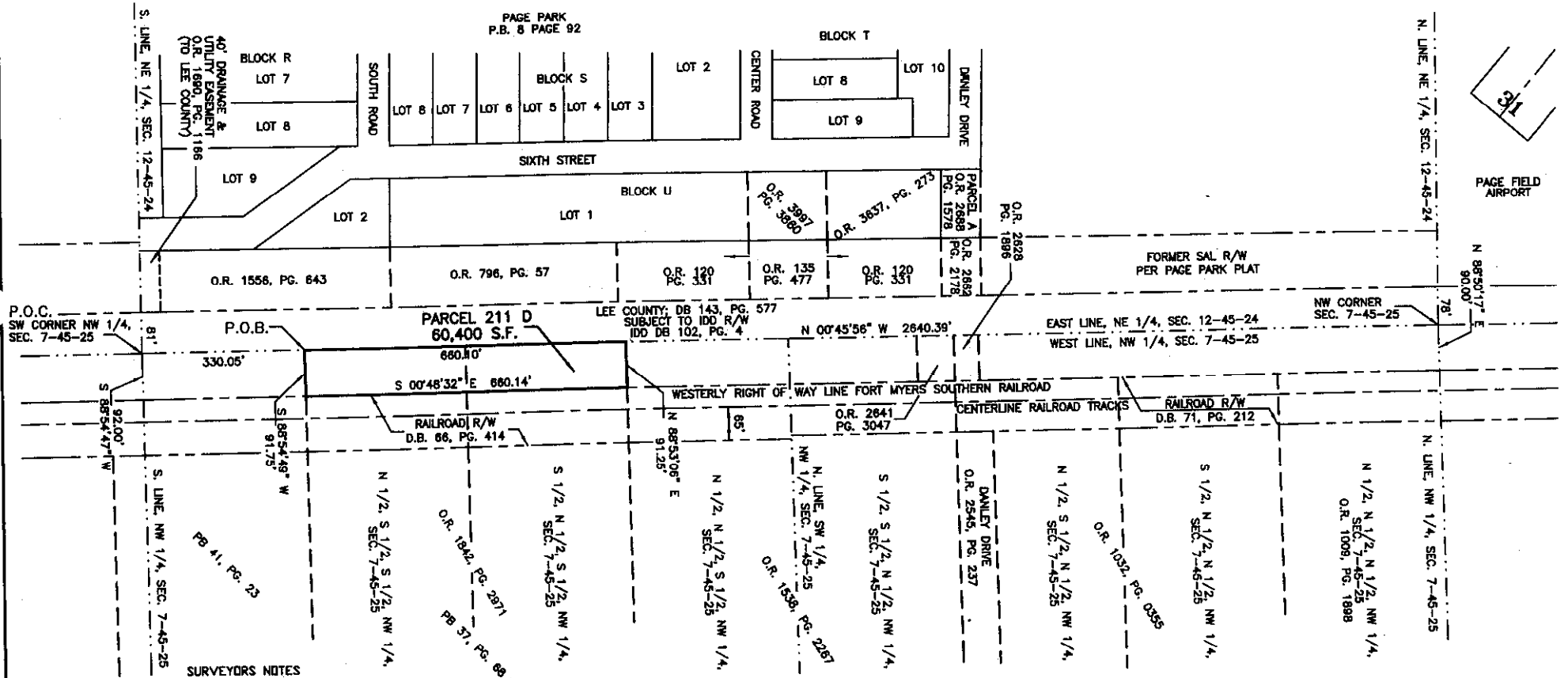
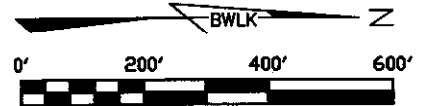
CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



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 7, TOWNSHIP 45 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA



P.O.C.  
SW CORNER NW 1/4,  
SEC. 7-45-25

**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: 12/11/2005

**Bean, Whitaker, Lutz & Kareh, Inc.** (18 4919)  
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS  
13041-1 MOORECROFT BOULEVARD, FORT MYERS, FLORIDA 33918-8910 (238) 481-1331

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
8-15-06	34377	J.R.C.	1" = 200'	1 OF 1	7-45-25

Exhibit "A"



**Division of County Lands**

**Ownership and Easement Search**

Search No. 07-45-25-00-00000.211D

Date: May 3, 2005

Parcel: 211D

Project: Ten Mile Linear Park, Project 2001

To: Michele S. McNeill-Despot, SRWA  
Property Acquisition Agent

From: Shelia A. Bedwell, CLS  
Property Acquisition Assistant

STRAP: Part of 07-45-25-00-00000.2110

*No changes as of 8/15/05*  
*Shelia*

Effective Date: April 9, 2005, at 5:00 p.m.

**Subject Property:** That part of the South 1/2 of the North 1/2 of the South 1/2 of the Northwest 1/4 of Section 7, Township 45 South, Range 25 East, Lee County, Florida, and; North 1/2 of the South 1/2 of the South 1/2 of the Northwest 1/4 of Section 7, Township 45 South, Range 25 East, Lee County, Florida, lying west of railroad.

Title to the subject property is vested in the following:

***Gertrude Freeman and Helene Rasmussen, successor co-trustees of the Jack A. Freeman Trust, dated June 8, 1965 as to an undivided 1/4 interest; Jack A. Freeman and Gertrude Freeman, husband and wife, as to an undivided 3/4 interest***

By that certain instrument dated April 28, 1986, recorded April 29, 1986, in Official Record Book 1842, Page 2971, Public Records of Lee County, Florida.

**Easements:**

None found of record.

NOTE (1): Affidavits regarding the Jack A. Freeman Trust, recorded in Official Record Book 1842, Page 2972 and Official Record Book 2225, Page 1128, Public Records of Lee County, Florida.

NOTE (2): Documents regarding guardianship of Jack Freeman recorded in Official Record Book 2495, Page 3429 and Official Record Book 2561, Page 1504, Public Records of Lee County, Florida.

NOTE (3): Resolution creating a preliminary assessment roll for the South Fort Myers Sewer System MSBU, recorded in Official Record Book 2206, Page 2243, Public Records of Lee County, Florida.

**Tax Status: 2004 taxes are due.**

*(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.**

# CERTIFICATE OF VALUE

Item/Segment: N/A  
State Road: N/A  
County: Lee  
Managing District: N/A  
FAP No.: N/A  
Parcel No.: 211D

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

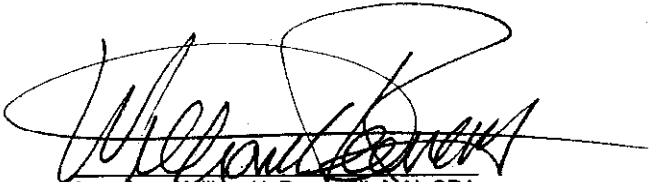
1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, unbiased, professional analyses, opinions and conclusions.
3. I have no present or prospective 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. Michael P. Jonas, State Certified General Appraiser (RZ2623) has provided professional appraisal assistance with the preparation of 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 9<sup>th</sup> day of September, 2005, is: **\$30,800**.

Market Value should be allocated as follows:

Land:	\$ 30,800	Land Area (Ac/SF):	<b>60,400 SF</b>
Improvements:	\$ 0	Land Use:	<b>Drainage Easement</b>
Net Damages &/or Cost to Cure:	\$ n/a		
<b>Total:</b>	<b>\$ 30,800</b>		

09/14/2005  
Date

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

# 5-Year Sales History

Parcel No. 211D

Ten Mile Linear Park Project,  
No. 2001

**NO SALES in PAST 5 YEARS**

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