

Agenda Item Summary

1. **ACTION REQUESTED/PURPOSE:** Approve the acquisition of Parcel 211E, Ten Mile Linear Park, Project No. 2001 in the amount of \$17,000 pursuant to the Purchase Agreement; authorize Chairwoman, on behalf of the Board, to sign the Purchase Agreement; approve payment of costs and fees to close; authorize the Division of County Lands to handle and accept all documentation necessary to complete this transaction.

2. **WHAT ACTION ACCOMPLISHES:** Allows the County to proceed with the project without resorting to Eminent Domain proceedings.

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

4. Departmental Category: 6

CGF

5. Meeting Date: **12-20-2005**

6. Agenda:
 Consent
 Administrative
 Appeals
 Public
 Walk-On

7. Requirement/Purpose: (specify)
 Statute 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 Simple

Property Details:

Owner: Harry M. Lowell
 STRAP No.: 07-45-25-00-00000.211E

Purchase Details:

Purchase Price: \$17,000
 Costs to Close: Approximately \$400.00

The property owner originally required \$30,323 for the property. However, through negotiations, they have now agreed to accepting \$17,000.

Appraisal Information:

Appraised Value: \$15,500 as of September 9, 2005
 Company: Coastal Engineering Consultants, by William H. Reeve, III, MAI, SRA

Staff Recommendation: Considering the costs associated with condemnation proceedings, staff recommends the Board approve the Requested Motion.

Account: 20200118700.506110

Attachments: Purchase and Sale Agreement, Location Map, Updated 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>K. Forsyth</i>			<i>DVD</i>	<i>Robert</i>	Analyst	Risk	Grants	Mgr.	<i>J. Jambor</i>
					<i>12/7/05</i>	<i>12/7/05</i>	<i>12/7/05</i>	<i>12/7/05</i>	<i>12-2-05</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty
 Date: **12/5/05**
 Time: **11:50 AM**
 Forwarded To:

RECEIVED BY COUNTY ADMIN: *[Signature]*
 12-7-05
 2005
 COUNTY ADMIN FORWARDED TO:
 12/5/05
 [Signature]

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

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 24 day of Nov, 2005 by and between Harry M. Lowell, hereinafter referred to as SELLER, whose address 4235 S. Atlantic Avenue, Wilbur By The Sea, FL 32127-6601, 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 30,323 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 Seventeen thousand and no/100 dollars (\$17,000.00), 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 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:

Jessica Ellen Biska
JESSICA ELLEN BISKA
Valerie K. Otto
Valerie K. Otto

CHARLIE GREEN, CLERK

BY: _____
DEPUTY CLERK (DATE)

SELLER:

Harry M. Lowell 24 Nov 05
Harry M. Lowell (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 - fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073



LEGAL DESCRIPTION

Ten Mile Linear Park
Parcel 211E

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 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:

Begin 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 north line of the south half of the south half of the south half of the northwest quarter of said Section 7; thence N.88°54'49"E. along said north line for 91.75 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 330.05 feet to an intersection with the south line of the northwest quarter of said Section 7; thence S.88°54'47"W. along said south line for 92.00 feet to the point of beginning.

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

Date: 15 JUN 2005

James R. Coleman
Registered Land Surveyor
Florida Certificate Number 3205

BWLK34377 Parcel 211E.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

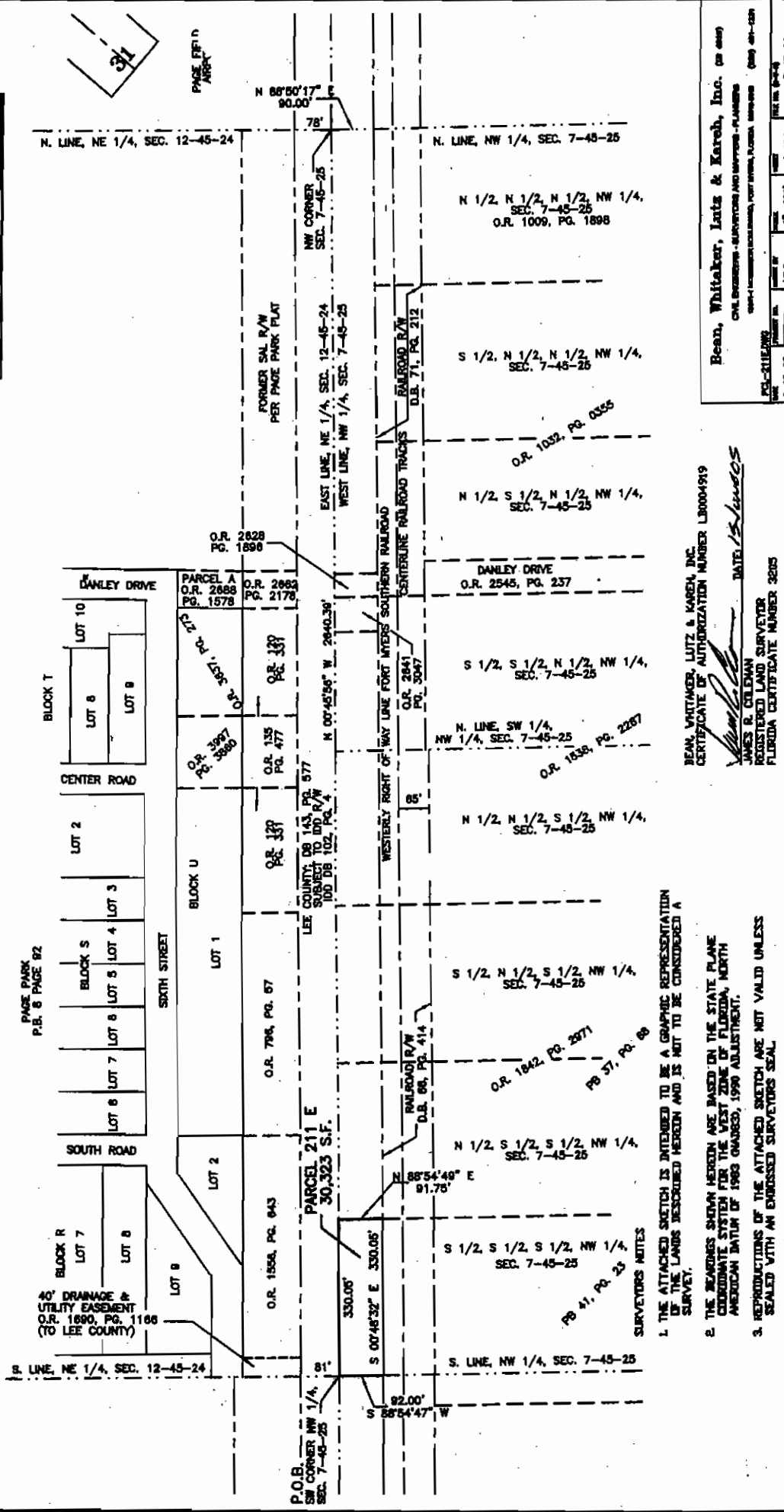


ASSOCIATES:

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

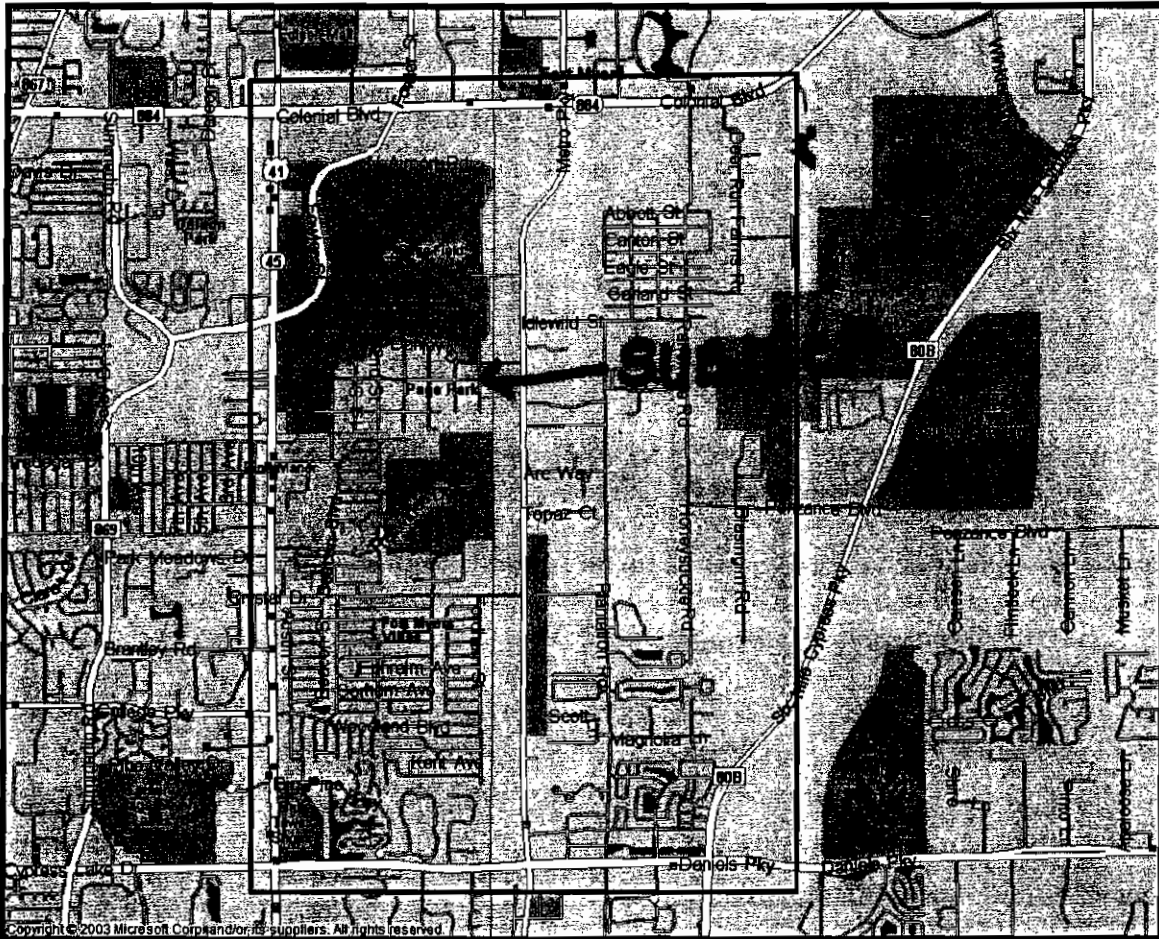


Bean, Whittaker, Lutz & Kereh, Inc. (c) 2007
 CIVIL ENGINEERS - SURVEYORS AND MAPPING - PLANNERS
 1001 UNIVERSITY BOULEVARD, SUITE 1000, TAMPA, FLORIDA 33606 (813) 481-1231
 REG. NO. 13577 J.A.C. 1-27-01
 6-19-05 13577 J.A.C. 1-27-01

BEAN, WHITTAKER, LUTZ & KEREH, INC.
 CERTIFICATE OF AUTHORIZATION NUMBER LB0004919
 DATE 1/2/2005
 JAMES R. GOLDMAN
 REGISTERED LAND SURVEYOR
 FLORIDA CERTIFICATE NUMBER 3205

- 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 CHANGED, 1990 ADJUSTMENT.
 3. REPRODUCTIONS OF THE ATTACHED SKETCH ARE NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL.

LOCATION MAP



Division of County Lands

Ownership and Easement Search

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

Date: May 3, 2005

Parcel: 211-E

Project: Ten Mile Linear Park, Project 2001

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

From: Shelia A. Bedwell, CLS
Property Acquisition Assistant

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

Effective Date: March 15, 2005, at 5:00 p.m.

Subject Property: See attached Exhibit "A"

Title to the subject property is vested in the following:

Harry M. Lowell

by that certain instrument dated May 20, 1986, recorded May 20, 1986, in Official Record Book 1846, Page 2728, Public Records of Lee County, Florida.

Assessments:

None found of record.

NOTE (1): Resolution for a Special Permit regarding setbacks, recorded in Official Record Book 946, Page 4723, Public Records of Lee County, Florida.

NOTE (2): Resolution creating a preliminary assessment roll for the South Fort Myers Sewer System ISBU, 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 or warranties as to its accuracy.

No changes as of 10/19/05



EXHIBIT "A"

That portion of the following described property, lying in Section 7, Township 45 South, Range 25 East, Lee County, Florida, lying west of railroad:

That portion of the South half (S 1/2) of the South half (S 1/2) of the South half (S 1/2) of the Northwest Quarter (NW 1/4) of Section 7, Township 45 South, Range 25 East, Lee County, Florida, and that portion of the Southwest Quarter of said Section 7 lying North of an East-West line connecting a point 65.53 feet South of the Northwest corner of said Southwest Quarter and a point 66.81 feet South of the Northeast corner of said Southwest Quarter, which lies East of the East right-of-way line of Canal Road (100 feet wide right-of-way).

SUBJECT to a Florida Power and Light Company transmission line easement (100.00 feet wide) being the West 100.00 feet of the East 150.00 feet of the above described parcel, a roadway and drainage easement 12.5 feet wide along the East side of said Canal Road right-of-way as recorded in Official Record Book #1005, Page 79, Public Records of Lee County, Florida, and further subject to easements, restrictions and reservations of record. (B)

CERTIFICATE OF VALUE

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

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

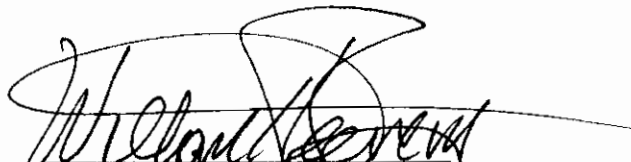
1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, unbiased, professional analyses, opinions and conclusions.
3. I have no present or prospective 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 9th day of September, 2005, is: \$15,500

Market Value should be allocated as follows:

Land:	\$ 15,500	Land Area (Ac/SF):	<u>30,323 SF</u>
Improvements:	\$ 0	Land Use:	Drainage Easement
Net Damages &/or Cost to Cure:	\$ <u>n/a</u>		
Total:	\$ 15,500		

09/14/2005
Date


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

5-Year Sales History

Parcel No. 211E

Ten Mile Linear Park Project, No. 2001

NO SALES in PAST 5 YEARS