

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

Blue Sheet No. 20070537

1. ACTION REQUESTED/PURPOSE: Approve Purchase Agreement in Lieu of Condemnation for a ± .25 acre parcel with a ± 2700 SF commercial office building located at 28000 West Brook Drive in the amount of \$620,000 for the Bonita Beach Road Widening Project No. 5720. Authorize payment of costs to close and the Division of County Lands to handle all documentation necessary to complete the transaction.

2. FUNDING SOURCE: Fund: TCI Bonita Beach Road – Phase II; Program: Capital Projects; Project: Bonita Beach Road Widening Phase II

3. WHAT ACTION ACCOMPLISHES: Acquisition of integral property necessary for the widening of Bonita Beach Road Project.

4. MANAGEMENT RECOMMENDATION: Approve

DATE CRITICAL

5. Departmental Category: 06

CLD

6. Meeting Date: 4-17-07

7. Agenda:

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

8. Requirement/Purpose: (specify)

- Statute 125
- Ordinance
- Admin. Code
- Other Blue Sheet
Resolution of Necessity 2-20-07

9. Request Initiated:

Commissioner _____
Department Independent
Division County Lands
By: Karen Forsyth, Director

10. Background: The Bonita Beach Road Widening – Phase II Project No. 5720 is planned to provide a safer corridor (six lanes) to accommodate a significantly higher volume of traffic.

Negotiated for: Department of Transportation

Interest to Acquire: Fee Interest for .25 acres with improved ± 2700 SF commercial building.

Property Details:

Owner: Laura J. Bell
 Address: 28000 West Brook Drive Bonita Springs, FL 34135
 STRAP: 01-48-25-B1-00100.0270

Purchase Details:

Purchase Price: \$620,000
Costs to Close: \$3,000

The property owner originally required \$700,000 for the property as listed for sale. However, through negotiations, they have now agreed to accept \$620,000.

Appraisal Information:

Appraised Value: \$590,000
Company: Maxwell & Henry Valuation Services, Inc.

Staff Recommendation: Staff is of the opinion that the purchase price increase above the appraised value can be justified, considering the costs associated with condemnation proceedings are estimated to be \$10,000 - \$15,000 excluding land value increases, additional attorney fees and appraisal expenses.

Account: 20572030713.506110

Attachments: Purchase Agreement, Title Data, Appraisal Data, Location Map, Sales History

11. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>K. Forsyth</i>			<i>BAD 4/3 4/4/07</i>	<i>Robert 4/4/07</i>	<i>Alan 4-5-07</i>	<i>Mike 4/5/07</i>	<i>4/5/07</i>	<i>4/5-07</i>	

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
 COUNTY ADMIN: *EW*
4/4
3pm
 COUNTY ADMIN
 FORWARDED TO: *PC*
4/5/07
11:50

Rec. by CoAtty
 Date: 4/4/07
 Time: 3:20pm
 Forwarded To: Admin 4/4/07
4:14

This document prepared by
Lee County Division of County Lands
Project: Bonita Beach Road Widening – Phase II Project No. 5720
Parcel: 409
STRAP No.: 01-48-25-B1-00100.0270

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 30th day of MARCH, 2007 by and between Laura J. Bell, hereinafter referred to as SELLER, whose address is 6835 Portofino Circle, Suite B, Fort Myers, FL 33912, 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 .25 acres more or less (improved parcel with \pm 2700 SF commercial office building), and located at 28000 West Brook Drive Bonita Springs, FL 34135 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 Bonita Beach Road Widening – Phase II Project, 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 Six Hundred Twenty Thousand (\$620,000), 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.

AGS

3. **EVIDENCE OF TITLE:** BUYER will obtain at their expense an American Land Title Association Form B Title Commitment and provide title insurance Owner's Policy in the amount of \$620,000, 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, if closing occurs between October 31 and January 1, then the SELLER is responsible for the full year's ad valorem real estate taxes for the year;
- (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. BUYER is exempt from ad valorem taxation. SELLER will pay all taxes determined to be legally due and payable by the County Tax

Collector. If closing occurs between October 31 and January 1, then the SELLER is responsible for the full year's ad valorem real estate taxes for the year without proration.

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, MOLD AND ASBESTOS AUDIT:** BUYER may perform or have performed, at BUYER's expense, such environmental, mold and/or asbestos audit of the Property. If the audit identifies any material environmental, mold and/or asbestos conditions not acceptable 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. **TENANTS AND PERSONAL PROPERTY:** SELLER agrees that all tenants and personal property will be vacated from the property prior to closing.

19. **SPECIAL CONDITIONS:** Any and all special conditions will be attached to this Agreement and signed by all parties to this Agreement.

WITNESSES:

Stephanie C. Rivald
Witness Signature

STEPHANIE A. RIVALD
Printed Name

Angel Kryman
Witness Signature

ANGEL KRYMAN
Printed Name

SELLER:

Laura J. Bell 3-30-07
Laura J. Bell (DATE)

CHARLIE GREEN, CLERK

BUYER:
LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY: _____
DEPUTY CLERK (DATE)

BY: _____
CHAIRMAN OR VICE CHAIRMAN

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

COUNTY ATTORNEY (DATE)

Exhibit A

Lot 27, of that certain subdivision known as BROOKSIDE ESTATES, UNIT1, according to the map or plat thereof on file and recorded in the office of the Clerk of Circuit Court of Lee County, Florida, in Deed Book 307, page(s) 320, less that part taken for County Road 865, as recorded in official Record Book 1962, pages 3193, at seq., public records of lee County, Florida.

Division of County Lands

Updated Ownership and Easement Search

Search No. 01-48-25-B1-00100.0270

Date: ~~January 11, 2007~~ April 2, 2007

Parcel: 409

Project: Bonita Beach Road Widening (Old US 41 to Lime St) Project #4044

To: Pat Fischer
Property Acquisition Agent

From: Shelia A. Bedwell, CLS
Property Acquisition Assistant

STRAP: 01-48-25-B1-00100.0270

March 28, 2007

Effective Date: December 27, 2006, at 5:00 p.m.

Subject Property: Lot 27, of that certain subdivision known as Brookside Estates, Unit 1, according to the map of plat thereof on file and recorded in the Office of the Clerk of the Circuit Court of Lee County, Florida, in Deed Book 307 Page 320, less that portion of said property taken for County Road 865, recorded in Deed Book 1962 Page 3193 Public Records of Lee County, Florida.

Title to the subject property is vested in the following:

Laura J. Bell.

By that certain instrument dated July 18, 1997, recorded July 25, 1997, in Official Record Book 2849 Page 736, Public Records of Lee County, Florida.

Easements: 1): Subject to a Right of Way Agreement, which grants the Bonita Springs Water System, Inc., a non-exclusive easement over the streets on the map of Brookside Estates, recorded in Official Record Book 828 Page 50, Public Records of Lee County, Florida.

2): Subject to a Grant of Utility Easement conveyed to Bonita Springs Utilities, Inc., affects West Brook Drive which bounds the subject property on the West, recorded in Official Record Book 3757 Page 1808, Public Records of Lee County, Florida.

3): Subject to a Grant of Utility Easement conveyed to Bonita Springs Utilities, Inc., affects the North 10 feet of the subject property, recorded in Official Record Book 4515 Page 4609, Public Records of Lee County, Florida.

4): Subject to Restrictions that were to be recorded with the Plat of Brookside Estates, said plat and restrictions were instead recorded with a deed conveying lot 63 on said plat, recorded in Deed Book 307 Page 320, Public Records of Lee County, Florida.

Note 1): Subject to a Mortgage, Assignment of Rents and Security Agreement, in the original sum of \$163, 500.00, between Laura J. Bell (mortgagor) and First National Bank of Florida (mortgagee), recorded in Official Record Book 2849 Page 738 and later modified by agreements recorded in Official Record Book 3081 Page 1948, Official Record Book 3256 Page 3185, Official Record Book 3580 Page 4865 and Official Record Book 4695 Page 39, Public Records of Lee County, Florida.



Maxwell & Hendry
Valuation Services, Inc.
Real Estate Appraisers - Consultants



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State-Certified General Real Estate Appraiser, RZ 55

VICE-PRESIDENT

Gerald A. Hendry, MAI, CCIM
State-Certified General Real Estate Appraiser, RZ 2245

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Matthew H. Caldwell
State-Certified General Real Estate Appraiser, RZ 2901

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Scott H. Simmons
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Christopher G. Reublin
State-Registered Trainee Real Estate Appraiser, RI 16310

Brooke M. Sanders
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14 March 2007

Lee County Division of County Lands
P.O. Box 398
Fort Myers, Florida 33902-0398

Attention: Robert G. Clemens, Acquisition Program Manager

Parcel: 409
STRAP: 01-48-25-B1-00100.0270
Project Name: Bonita Beach Road Widening
Project No. 5720
S.T.A. Number: 59

Dear Mr. Clemens,

As you requested, an inspection and analysis has been made of the above referenced property. The purpose of this assignment is to estimate the market value of the property rights proposed for acquisition, for the above referenced property.

Market value for this purpose is understood to be the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. The full definition of market value can be found in the body of this report.

As per the Uniform Standards of Professional Appraisal Practice (USPAP), there are three report writing options. These options would include either a self-contained report, summary report, or restricted use report format. The essential difference among these three options is in the content and level of detail provided. For the purposes of this assignment, a summary appraisal format has been used. In this appraisal, all three approaches to value will be used to estimate the market value of the subject property. The subject property is currently occupied by three tenants, however, according to the property owner the tenants are on a month-to-month lease. As a result, a separate leased fee analysis is not considered applicable. This summary appraisal report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP 2006).

The intended use of this report is to be an aid in estimating the amount of compensation due to the property owner as a result of the proposed acquisition identified herein. The subject property was inspected on 07 March 2007 by Mr. Christopher G. Reublin, Registered Appraiser Trainee. Mr. W. Michael Maxwell, MAI, SRA made a subsequent inspection of the property. Our compensation in this assignment 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 obtaining of a stipulated result, or the occurrence of a subsequent event. The market value estimates herein are reported subject to any Extraordinary Assumptions, General Assumptions, or Hypothetical Conditions (if any) summarized below and in the Addendum of this report.

Based on the information presented, and subject to the definitions, assumptions and limiting conditions expressed within this report, it is our opinion that the market value of the subject property as of 07 March 2007, is:

FIVE HUNDRED NINETY THOUSAND DOLLARS.....(\$590,000)

Respectfully submitted,



W. Michael Maxwell, MAI, SRA
State-Certified General Real Estate Appraiser
RZ 55



Christopher G. Reublin
State-Registered Trainee Real Estate Appraiser
RI 16310



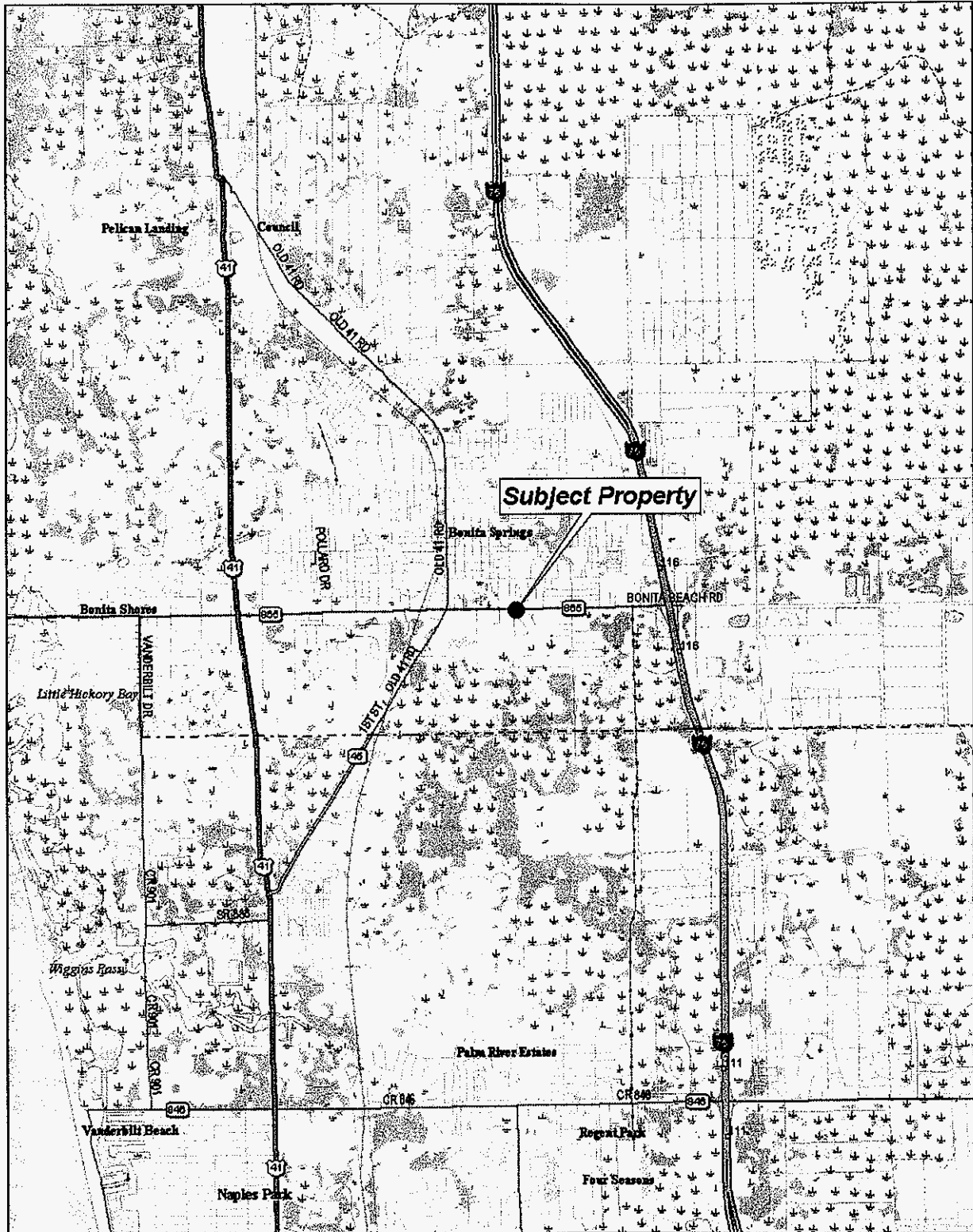
INDIVIDUAL MEMBER

W. MICHAEL MAXWELL, MAI, SRA
GERALD A. HENDRY, MAI, CCIM

EXECUTIVE SUMMARY

PROJECT NAME:	Bonita Beach Road Widening - Project Number 5720
PARCEL NUMBER:	409
OWNER OF RECORD:	The subject property is currently owned by Laura J. Bell, whose address is 6835 Portofino Circle, Suite B, Fort Myers, Florida 33912. w
STRAP NUMBER:	01-48-25-B1-00100.0270
LOCATION:	The subject property is located at the southeasterly corner of Bonita Beach Road and West Brook Drive, in the Bonita Springs market area of Lee County Florida. The property address is 28000 West Brook Drive, Bonita Springs, Florida 34135.
LAND AREA:	The subject property is irregular in shape and consists of 0.25 acres (10,731 square feet), as per the Lee County Property Appraiser.
PROPERTY RIGHTS PROPOSED FOR ACQUISITION:	The subject is proposed for acquisition in its entirety.
IMPROVEMENTS:	The improvements located on the subject property include a two-story commercial office building, consisting of 2,784 gross square feet, as well as site improvements appurtenant to the structure.
ZONING:	CS-2
LAND USE:	Mod. Dens. Res.
HIGHEST & BEST USE "AS VACANT":	Commercial Development
HIGHEST & BEST USE "AS IMPROVED":	Commercial Development
ESTIMATES OF VALUE –	
Cost Approach to Value:	\$500,000
Sales Comparison Approach:	\$580,000
Income Approach to Value:	\$590,000
Final Value Estimate:	\$590,000
INTEREST APPRAISED:	Fee Simple Interest
DATE OF VALUATION:	07 March 2007

MARKET AREA MAP



5-Year Sales History

Project: Bonita Beach Road Widening – Phase II
No. 5720

STRAP No. 01-48-25-B1-00100-0270

NO SALES IN PAST 5 YEARS