

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

Blue Sheet No. 20021147

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Direct the proposed "Lee County Surplus Lands Ordinance" to public hearing on November 26, 2002 at 5:00 p.m.

**WHY ACTION IS NECESSARY:** Board must formally adopt ordinance at a public hearing.

**WHAT ACTION ACCOMPLISHES:** Sets public hearing date and time.

**2. DEPARTMENTAL CATEGORY:**  
COMMISSION DISTRICT #

*C12A*

**3. MEETING DATE:**

*10-22-2002*

**4. AGENDA:**

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

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

- STATUTE 125.35
- ORDINANCE
- ADMIN. CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT County Atty Office
- C. DIVISION
- BY: Dawn E. Perry-Lehnert  
Assistant County Attorney

**7. BACKGROUND:**

The Florida Legislature recently adopted an amendment to FS §125.35 to provide counties with the option to adopt an alternative procedure for the disposition of surplus real property. At the present time, the County can only sell surplus property through the costly, labor intensive bid process or via a private sale to adjacent owners meeting defined statutory criteria. The statutory amendment provides the County with a unique opportunity to establish an alternative procedure that will work more effectively and efficiently.

Staff and the County Attorney's office have worked together to formulate a workable alternative procedure. This procedure is set out in the proposed ordinance. The proposed ordinance makes use of the internet technology available to provide notice to potential buyers. It also establishes the opportunity for County staff to negotiate a purchase agreement with the potential purchaser chosen based upon a "modified" bid procedure. This should allow staff to overcome some of the obstacles to obtaining a bonafide purchaser for surplus real property currently experienced by staff in compliance with the existing statutory procedures.

ATTACHMENT: Proposed Ordinance

**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
N/A	N/A	N/A	N/A	<i>Lupey Perry</i>	OA	OM	RISK	GC	<i>10/10/02</i>
					<i>RK 10/8</i>	<i>10/10/02</i>	<i>10/10/02</i>	<i>10/10/02</i>	<i>10/10/02</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.  
FORWARDED TO:  
*2002*  
*10-8-02*

RECEIVED BY  
COUNTY ADMIN. *RK*  
*10/8 2002*  
COUNTY ADMIN.  
FORWARDED TO: *05*  
*10/10 215*

LEE COUNTY ORDINANCE NO \_\_

AN ORDINANCE OF LEE COUNTY, FLORIDA RELATING TO THE DISPOSITION OF REAL PROPERTY ENTITLED THE "LEE COUNTY SURPLUS LANDS ORDINANCE"; PROVIDING FOR A SHORT TITLE; PURPOSE AND INTENT; APPLICABILITY; AND DEFINITIONS; ESTABLISHING STANDARDS AND PROCEDURES APPLICABLE TO SURPLUS LAND DECLARATION; DETERMINING METHOD OF SURPLUS LAND SALE; BID SALE; PRIVATE SALE; COUNTY SALE; DETERMINATION AS TO LAND VALUE; AND NOTICE REQUIREMENTS; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners has the right and authority to sell County held property under the provisions of Florida Statutes §125.35; and

WHEREAS, Florida statutes §125.35(3) provides the Board with the authority to adopt an ordinance establishing alternative standards and procedures applicable to the sale or conveyance of real property owned by the County; and

WHEREAS, the establishment of alternative procedures for the sale of surplus county property will facilitate a more efficient return of surplus lands to the tax rolls; and

WHEREAS, the Board finds it is appropriate and in the best interest of the public to adopt standards and procedures applicable to the sale and conveyance of County surplus real property.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

**SECTION ONE: SHORT TITLE**

This ordinance will be known as the "Lee County Surplus Lands Ordinance."

**SECTION TWO: PURPOSE AND INTENT**

In accordance with Florida Statutes §125.35(3), the purpose of this ordinance is to set forth an alternative procedure applicable to the sale (disposition) of surplus real property owned by Lee County. This ordinance does not prohibit the Board from disposing surplus real property in accordance with the provisions of Florida Statutes §125.35(1) and (2) or any other statutorily proscribed method. The balance of statutory and local provisions applicable to the sale of County owned real property remain unchanged by this ordinance.

### **SECTION THREE: APPLICABILITY**

This ordinance is applicable to the disposition of County owned real property declared surplus property by the Board of County Commissioners.

### **SECTION FOUR: DEFINITIONS**

*Board* means the Lee County Board of County Commissioners.

*Director* means the Director of the Division of County Lands.

*Surplus property* means real property owned by the County that the Board has determined is no longer necessary to serve a public purpose. Property specifically acquired as road/street right-of-way may not be deemed surplus property and sold under this ordinance.

### **SECTION FIVE: PROCEDURE**

#### **A. Surplus Land Declaration**

1. *Discretionary act.* Declaring County owned real property as surplus property is a discretionary act of the Board. It is not subject to appeal.

2. *Recommendation.* The decision to declare County owned real property as surplus must be based upon a recommendation from the Division of County Lands. This recommendation will be presented to the Board on the regular Board agenda and address the following factors:

- a. any potential use of the parcel for a County purpose;
- b. potential purchasers of the property, if known;
- c. current zoning, site dimensions, etc;
- d. value estimate;
- e. Any recommended conditions on the transfer of title (eg. limitation on access or use);
- f. estimated costs associated with the disposition to be paid by the County, if any; and
- g. proposed method of disposition.

## **B. Determining Method of Surplus Lands Sale or Lease**

1. *Alternatives.* Florida Statutes provides a number of alternative methods for the disposition of County surplus property. These include:

- a. Bid Sale (FS §125.35(1))
- b. Private Sale (FS §125.35(2))
- c. County Sale (FS §125.35(3))
- d. Conveyance to Governmental Entity/Charitable Institution (FS §125.38)
- e. Like Kind Exchange (FS §125.37)

2. *Method selection.* In absence of specific Board direction, the Director has the sole discretion to determine the method to be used in disposing of surplus County land. Neither the Board nor Director's decision is subject to appeal. Exercise of discretion will be based upon consideration of the following factors:

- a. Land value
- b. Length of time the property has been declared as surplus
- c. Costs associated with the disposition
- d. Benefit of the disposition to the County
- e. Parties requesting disposition
- f. Previous attempts to dispose of surplus property using alternative methods
- g. Development potential of parcel

## **C. Bid Sale**

1. *Generally.* The Bid Sale process is controlled by the provisions of FS §125.35(1). This process generally results in the greatest disposition costs to the County. However, it offers a wide opportunity for potential bidders.

In general, surplus property with a value estimate of \$50,000 or more will initially be offered for sale in accordance with the Bid Sale process. However, the Director retains the discretion to forgo the initial Bid Sale in the absence of specific Board direction.

2. *Request.* Any person may request a Bid Sale of property by filing a written request with the Division of County Lands. The request must specifically identify the subject property and include a statement as to a bonafide intention to purchase the surplus

property. A Bid Sale may also be initiated by the Director based upon a review of the declared surplus property inventory.

3. *Surplus Determination.* If the parcel a person requests to purchase is not designated surplus, then a recommendation with respect to this determination may be sent to the Board in accordance with section A, above. If the Board declares the parcel surplus, then the request can proceed through the disposition process.

A request to purchase property already declared surplus by the Board does not require additional Board action until a purchase agreement is executed by the potential buyer and presented for Board approval.

4. *Notice.* Prior to the Board approval of any real estate purchase agreement of the property under a Bid Sale, a notice calling for bids must be published in a newspaper of general circulation once a week for at least two weeks. The notice must indicate the location of the subject property, where a bid package may be obtained, and the bid submittal deadline.

5. *Bid Acceptance.* All bids must comply with the County Lands approved bid specifications. Only bids meeting these specifications will be considered. Bids must be accompanied by the requisite deposit in the form of cashier's check, certified funds or a money order. No cash or personal checks will be accepted.

6. *Purchase Agreement.* The Board may enter into a real estate purchase agreement for the sale of the parcel with the highest acceptable bidder. However, the Board has the right to reject any and all bids for any reason.

7. *Alternative Disposition.* If the initial Bid Sale is not successful, the Director may pursue an alternative disposition method.

#### **D. Private Sale**

1. *Generally.* The Private Sale process is controlled by the provisions of FS §125.35(2). A Private Sale is appropriate only after the Director determines that the subject surplus property is of value only to one or more adjacent property owners and if the property meets one or more of the following criteria:

- a. The parcel is of insufficient size and shape to be issued a building permit (ie. it is not a buildable lot under County regulations);
- b. The value estimate of the parcel is \$50,000 or less; or
- c. The parcel can only reasonable be expected to be used by an adjacent property owner due to the size, shape, location or value of the parcel.

2. *Request.* A person may request a Private Sale of property by submitting a written request to the Director of the Division of County Lands. The request must identify

the subject property and include a statement as to a bonafide intention to purchase the surplus property. A Private Sale may also be initiated by the Director based upon a review of the declared surplus property inventory.

3. *Surplus Determination.* If the parcel a person requests to purchase is not designated surplus, then a recommendation with respect to this determination may be sent to the Board in accordance with section A, above. If the Board declares the parcel surplus, then the request can proceed through the disposition process.

A request to purchase property already declared surplus by the Board does not require additional Board action until a purchase agreement is executed by the potential buyer and presented for Board approval.

4. *Notice.* A written notice of the intent to sell the property under the Private Sale alternative must be sent to all adjacent property owners by certified mail. The notice must inform the property owners about the property for sale, how an offer to purchase the parcel may be submitted, the required time frame for submittal of an offer and what process will result if more than one property owner desires to purchase the subject surplus parcel.

5. *Multiple offers to purchase.* If two or more adjacent property owners notify the county of their desire to purchase the subject surplus parcel, then the County will solicit sealed bids from these property owners.

6. *Purchase Agreement.* The Board may enter into a purchase agreement for the sale of the parcel with the highest acceptable bidder. However, the Board has the right to reject any and all bids for any reason.

## **E. County Sale**

1. *Request.* A County Sale may also be initiated by the Director based upon a review of the declared surplus property inventory. Any person may request a County Sale of property by submitting a written request to the Director of the Division of County Lands. The request must specifically include the following:

- a. name of the person or legal entity interested in the property
- b. the reason for acquiring the property
- c. the legal description, STRAP number and street address of the property
- d. a statement as to a bonafide intention to purchase the surplus property; and
- e. any other information the applicant deems relevant.

2. *Surplus Determination.* If the parcel a person requests to purchase is not

designated surplus, then a recommendation with respect to this determination may be sent to the Board in accordance with section A, above. If the Board declares the parcel surplus, then the request can proceed through the disposition process.

A request to purchase property already declared surplus by the Board does not require additional Board action until a purchase agreement is executed by the potential buyer and presented for Board approval.

3. *Notice.*

a. *Types of notice.* Once the subject parcel has been properly designated surplus, notice of the availability and potential sale of the parcel will be provided through at least two of the following means.

- (1) County Lands Website
- (2) Sign on the subject parcel
- (3) Posted notice in the Courthouse
- (4) Mailed notice to adjacent property owners
- (5) Notice to names on the surplus lands mailing list
- (6) Newspaper advertisement (optional, at the Director's discretion)

b. *Notice period/deadline for bid submittal.* The deadline for submittal of any bids will be a minimum of 30 days from the date the Notice of Pending Sale is first published. For purposes of calculating the deadline date, the first day of publication will not be counted; a deadline date falling on a weekend or holiday will be moved forward to the next regular business day.

4. *Sealed Bid.* A sealed bid must be submitted on the form required by County Lands. The form is available on the website or by contacting the Division of County Lands. All bids must be submitted prior to the deadline stated in the notice. Bids submitted after the cut off date will be returned. The sealed bids will be opened upon the deadline and ranked in accordance with the highest to lowest bidder. The highest bidder will be given the first opportunity to negotiate a purchase agreement with the County.

5. *Negotiation of Purchase Agreement.* The County will attempt to negotiate a purchase agreement with the highest bidder. All aspects of the real estate negotiation process are open for discussion, including an increase in the bid or sale price of the property. The negotiation period will last for a maximum of 30 days. If County Lands is unable to successfully negotiate a purchase agreement with the highest bidder within the negotiation period, then the County may cease negotiations with this bidder and proceed to negotiations with the second highest bidder. If negotiations are unsuccessful with the second highest bidder then County may continue the process with all bidders, from highest to lowest.

The Board may not enter into a purchase agreement for a price less than that offered by the highest bidder under the current sealed bid process. However, the Board

has the right and authority to reject any and all offers for any reason.

6. *Purchase Agreement.* Once a purchase has been successfully negotiated, the agreement will be sent to the Board for consideration and approval. The Board will consider approval of the purchase agreement as a regular Board agenda item. Any party wishing to speak to the Board with respect to the purchase agreement will be provided an opportunity to do so as part of the public comment on Board consent and administrative agenda items. The date the item will appear on the Board agenda will be available on the County Lands website.

Upon approval by the Board, the Chairman, on behalf of the Board, may enter into a real estate purchase agreement for the sale of the parcel with the highest acceptable bidder. The Board has the right to reject any and all bids for any reason.

#### **F. Determination as to Estimated Value of Land**

The Director will determine the estimated value of the surplus property. This determination may be based upon the assessed value as set by the County Property Appraiser, staff recommendations or an appraisal prepared by an independent real estate appraiser acceptable to the County Lands Director.

Any determination as to the estimated value of surplus land must consider and evaluate the following:

1. Configuration of property
2. Location
3. Uplands/wetlands
4. Environmental concerns
5. Ability for parcel to be developed in accordance with applicable regulations
6. Current zoning on the parcel
7. Encumbrances on title

#### **G. Notice Requirements**

1. *County Lands Website.* The address for the website is <http://www.lee-county.com/countylands>. This site includes a listing of all property currently held by the County as surplus lands. The forms and procedures applicable to purchasing surplus County property are set forth on the site. County Lands will update the information available at this site on an ongoing basis, but not less than once each quarter.

Notices as to potential sales of surplus property through any of the methods set forth in this ordinance will be posted on the website.

2. *Sign on the subject parcel.* This sign will indicate the property is available for purchase. It will also provide a contact phone number for additional information as to a



pending purchase or submitting an offer to purchase.

3. *Posted notice in the Courthouse.* Property to be sold under the County Sale alternative may be listed on a notice posted in the Courthouse. This notice will identify the subject parcel, its location, the bid closing date and the place where information as to the bid process may be obtained.

4. *Mailed notice to adjacent property owners.* A notice mailed directly to the adjacent property owners may be provided in the context of a Private Sale or County sale. This notice will contain information as to the pending sale and how an offer may be submitted.

5. *Notice to names on the surplus lands mailing list.* Persons on the surplus lands mailing list may receive a courtesy notice as to all pending surplus lands sales on a quarterly basis. This notice will be sent via e-mail to the address provided by the requesting party unless otherwise specifically requested by the person. This is a courtesy notice only and failure to send this notice will not constitute a defect in the sale procedure.

6. *Newspaper Advertisement.* A newspaper advertisement is required in conjunction with the Bid Sale process. However, ads may be used at the Director's discretion at anytime in conjunction with the sale of surplus property under the Private Sale or County Sale Process.

## **SECTION SIX: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

## **SECTION SEVEN: SEVERABILITY**

It is the Board's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

## **SECTION EIGHT: CODIFICATION AND SCRIVENER'S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public

hearing.

**SECTION NINE: EFFECTIVE DATE**

The ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

THE FOREGOING ORDINANCE was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and, being put to a vote, the vote was as follows:

ROBERT JANES	_____
DOUGLAS ST. CERNY	_____
RAY JUDAH	_____
ANDREW W. COY	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2002.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of County Attorney

EFFECTIVE DATE: Filed with the Florida Department of State on \_\_\_\_\_ Day of \_\_\_\_\_, 200\_\_\_\_.