

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

20041009
Blue Sheet No. ~~20041004~~

1. REQUESTED MOTION:

ACTION REQUESTED: Authorize: 1) the Division of County Lands to make a binding offer to property owner in the amount of \$40,000 for Parcel 300, Bonita Beach Road Widening, Project No. 4044, pursuant to the Purchase Agreement; 2) 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 # 3 *C6B*

3. MEETING DATE: *08-24-2004*

4. AGENDA:
 CONSENT
 ADMINISTRATIVE
 APPEALS
 PUBLIC
 WALK ON
 TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)
 STATUTE 73 & 125
 ORDINANCE
 ADMIN. CODE
 OTHER

6. REQUESTOR OF INFORMATION:
A. COMMISSIONER
B. DEPARTMENT Independent
C. DIVISION County Lands *2/1/04*
 BY: Karen L. W. Forsyth, Director *KLF*

7. BACKGROUND:
Negotiated for: Department of Transportation
Interest to Acquire: 7,148 square feet of fee interest in vacant property
Property Details:
 Owner: William Fitzgerald, Trustee of the Bonita Gateway Land Trust dated March 5, 1998
 STRAP No.: 06-48-26-B1-00001.0000
Purchase Details:
 Purchase Price: \$40,000.00
Appraisal Information:
 Company: Carlson, Norris and Associates, Inc.
 Appraised Value: \$35,000
Staff Recommendation: Staff is of the opinion that the purchase price increase of \$5,000 above the appraised value can be justified considering the costs associated with condemnation proceedings, estimated between \$6,000 - \$8,000 excluding the value of the property. Staff recommends the Board approve the Requested Motion.
Account: 20404430700.506110
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 <i>Cuffman 8/12/04</i> | | | | G County Manager |
|--------------------------|------------------------------|----------------------|--------------------|-----------------------------|--|-----------------------|------------------------|---------------------------|---------------------|
| <i>K. Forsyth</i> | | | <i>DAO 8/12/04</i> | <i>Shawn Neeson 8/10/04</i> | OA <i>8/11/04</i> | COM <i>8/12/04</i> | Risk <i>8/11/04</i> | GC <i>P.M. 8/10/04</i> | <i>HS 8/12/04</i> |

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

3/11/04 3:15 PM
of Adm. 8/10/04 12:44

RECEIVED BY
 COUNTY ADMIN:
8/12/04
 COUNTY ADM. *3:20 pm 8/12/04*
 FORWARDED TO:
8/12/04
nwn

EW

This document prepared by
Lee County Division of County Lands
Project: Bonita Beach Road Widening Project No. 4044
Parcel: 300
STRAP No.: 06-48-26-B1-000001.0000

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 _____, 20___ by and between **William Fitzgerald, Trustee of the Bonita Gateway Land Trust dated March 15, 1998**, hereinafter referred to as SELLER, whose address is 4099 Tamiami Trail N, Ste. 30, Naples, Florida 34103, 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 .16 acres more or less, and located at 12025 Bonita Beach Road, Bonita Springs, Florida 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 Project No. 4044, 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 Forty Thousand Dollars and no/100 (\$40,000.00), 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:

WITNESSES:

SELLER:

William Fitzgerald, (Date)
Trustee of the Bonita Gateway Land
Trust dated March 15, 1998

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"


PARCEL 300

A parcel of land lying in Section 6, Township 48 South, Range 26 East, Lee County, Florida, being more particularly described as follows:

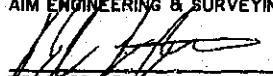
COMMENCE at the Northwest corner of Section 6, said point being Station 444+93.39 on the Survey Base Line of Bonita Beach Road, Lee County Project Number CN-01-16; Thence N 88°57'02" E, 100.00 feet along said Survey Base Line and north line of said Section 6 to station 445+93.39; Thence departing said Survey Base Line, S 01°02'58" E, 81.22 feet to a point on the south right of way line of Bonita Beach Road said point also being 81.22 feet right of station 445+93.39 and the POINT OF BEGINNING; Thence S 86°20'35" E, along said south right of way line, 204.69 feet to a point being 98.01 feet right of station 447+97.39; Thence departing said south right of way line, S 01°02'58" E, 26.64 feet; Thence S 88°57'02" W, 204.00 feet; Thence N 01°02'58" W, 43.43 feet to the south right of way line of Bonita Beach Road and the POINT OF BEGINNING.

Said lands containing 7148 square feet, more or less.

NOTE:

BEARINGS SHOWN HEREON ARE BASED UPON THE SURVEY BASE LINE OF BONITA BEACH ROAD, HAVING A BEARING OF N 88°57'02" E, FROM P.I. STATION 444+93.39 BEING A FOUND ALUMINUM DISK STAMPED "MCKEE LB 5093  " AT THE NORTHWEST CORNER OF SECTION 6. TO EQUATION STATION STA. 459+60.75 SURVEY BASE LINE BONITA BEACH ROAD = STA. 142+94.01 I-75 BEING A SET P/K NAIL AND DISK "LB 3114"

PREPARED BY:
AIM ENGINEERING & SURVEYING, INC.

 7/3/03
BOB POTTER, P.S.M. DATE
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5688

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND
MAPPER.

AIM Engineering & Surveying, Inc.

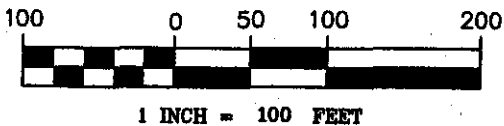


5300 LEE BLVD.
P.O. BOX 1235
LEHIGH ACRES
FLORIDA 33970
239/332-4569
FX:239/332-8734

icensed Business Number 3114

THIS IS NOT A SURVEY SHEET 1 OF 2

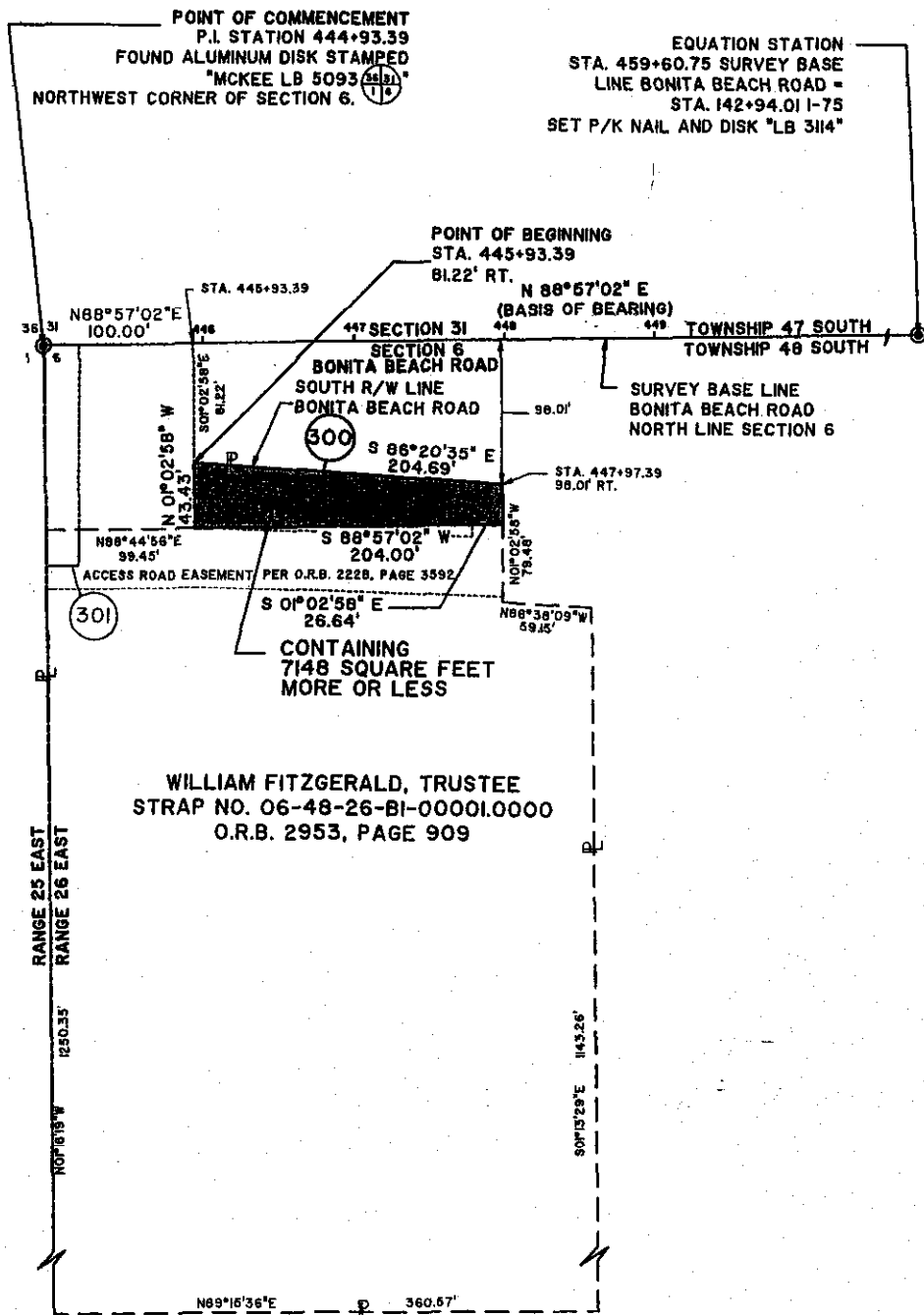
| | |
|----------------------------|---|
| PROJECT NUMBER: 01-8109 | DESCRIPTION: LEGAL DESCRIPTION AND SKETCH PARCEL 300 BONITA BEACH ROAD LEE COUNTY PROJECT NUMBER CN-01-16 |
| DRAWN BY: LWC | CLIENT: LEE COUNTY |
| DATE: 7/3/03 | SEC-TWP-RGE: 6-48S-26E |
| FILE: 8109-300 | COUNTY: LEE COUNTY |



LEGEND
 O.R.B. = OFFICIAL RECORDS BOOK
 E. = PROPERTY LINE
 STA. = STATION
 RT. = RIGHT
 P.I. = POINT OF INTERSECTION
 R/W = RIGHT OF WAY



Exhibit "A"



AMM Engineering & Surveying, Inc.

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| | |
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| DATE: 7/1/01 | SEC-TWP-RGE: 6-48-26E |
| FILE: 8100-300 | COUNTY: LEE COUNTY |

Division of County Lands

Updated Ownership and Easement Search

Search No. 22499
Date: June 16, 2004
Parcel: 300
Project: Bonita Beach Road Project
4044

To: Michael J. O'Hare, SR/WA
Property Acquisition Agent

From: Shelia A. Bedwell, CLS 
Property Acquisition Assistant

STRAP: 06-48-26-B1-00001.0000

Effective Date: May 26, 2004, at 5:00 p.m.

Subject Property: See attached legal description

Title to the subject property is vested in the following:

William Fitzgerald, Trustee of the Bonita Gateway Land Trust dated March 5, 1998

by that certain instrument dated April 22, 1998, recorded April 29, 1998, in Official Record Book 2953, Page 909, Public Records of Lee County, Florida.

Easements:

- 1. Access Road Easement Grant to Lee County, recorded in Official Record Book 2228, Page 3592, Public Records of Lee County, Florida.
- NOTE (1): Resolution of the Board of County Commissioners, recorded in Official Record Book 1898, Page 537, Public Records of Lee County, Florida.
- NOTE (2): Notice of Development Order, recorded in Official Record Book 2201, Page 4189, as re-recorded in Official Record Book 2208, Page 1859, Public Records of Lee County, Florida.
- NOTE (3): Final Judgment against a William Fitzgerald, recorded in Official Record Book 4044, Page 1997, Public Records of Lee County, Florida. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.
- NOTE (4): Order for Execution against a William Fitzgerald, recorded in Official Record Book 4192, Page 3101, Public Records of Lee County, Florida. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.
- NOTE (5): Default Final Judgment against a William Fitzgerald, recorded in Official Record Book 4309, Page 4856, Public Records of Lee County, Florida. This must be addressed and resolved by the Title Company or Attorney that handles the transfer to the County.

Tax Status: 2002 Ad Valorem Taxes are PAID IN FULL.
(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.

PARCEL 300

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PREPARED BY:
AIM ENGINEERING & SURVEYING, INC.

[Signature] 7/3/03
BOB POTTER, P.S.M. DATE
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5888

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

AIM Engineering & Surveying, Inc.



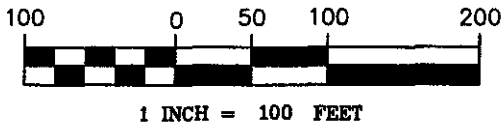
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Licensed Business Number 3114

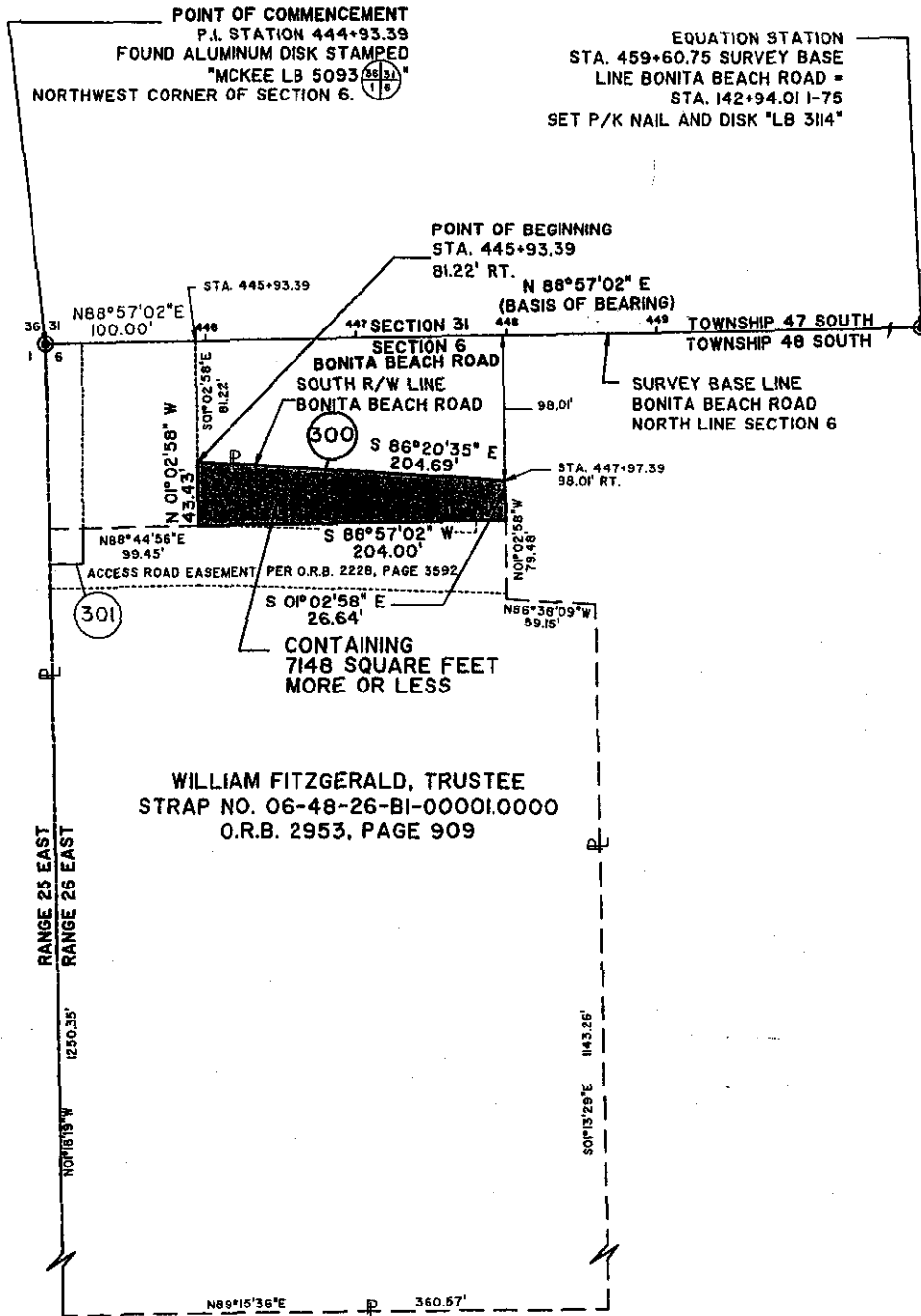
THIS IS NOT A SURVEY

SHEET 1 OF 2

| | |
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| DRAWN BY: LWC | CLIENT: LEE COUNTY |
| DATE: 7/3/03 | SEC-TWP-RGE: 6-48S-26E |
| FILE: 8109-300 | COUNTY: LEE COUNTY |



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SHEET 2 OF 2

| | | | |
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Carlson, Norris and Associates, Inc.

APPRAISAL • CONSULTATION • REALTORS

C. William Carlson, MAI, SRA
State Certified General Appraiser #0000667
ccarl1@hotmail.com

J. Lee Norris, MAI, SRA
State Certified General Appraiser #0000643
leenor56@hotmail.com

June 8, 2004

Department of Public Works
Division of County Lands
Lee County, Florida
P. O. Box 398
Ft. Myers, Florida 33902-0398
Attn: Mr. Robert G. Clemens
Acquisition Program Manager

Re: Bonita Beach Road Widening, Project Number 4044
Subject Parcel 300
Fee Simple Partial Take - Vacant Land
Bonita Beach Road
Bonita Springs, Florida 34135

Dear Mr. Clemens:

In accordance with your request, we have made an inspection of the above referenced property. The site is an irregularly shaped parcel of land containing a total of 7,148 square feet at Quails Nest Road. The property is located on the south side of Bonita Beach Road just west of Interstate 75. The property is located within Section 6, Township 48 South, Range 26 East, Lee County, Florida.

The larger parcel contains 9.48 acres, more or less and is primarily unimproved at this time. The parent or larger parcel is impacted by an east/west access easement towards its northerly boundary. The property which is the subject of this analysis is located between the non paved access easement running east and west along the front of the property and the southerly boundary line of the Bonita Beach Road right of way.

This analysis considers only the value of the real estate and takes into consideration no value for equipment or personal property. As per your request this is a **Complete Appraisal Report presented in Summary Format** which represents only summary discussions for the data, reasoning and analysis that were used in the appraisal process to develop the appraiser's opinion of value.

This analysis has utilized the most current market value definition which is contained within the attached appraisal. The property was last physically inspected on February 2, 2004.

The interest appraised is fee simple and the site is a partial take.

Mr. Robert Clemens
June 8, 2004
Page 2

Based on market conditions existing as of the effective date of appraisal, and in consideration of the property as it existed on February 2, 2004, it is my opinion the subject site which contains 7,148 square feet and has a market value of:

THIRTY FIVE THOUSAND FORTY DOLLARS (\$35,000.00).

This value estimate represents the total compensation due the property owner as of the effective date of appraisal, February 2, 2004.

The attached appraisal report is a **Complete Summary Appraisal Report** which is intended to comply with reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. This report is made subject to certain assumptions and limiting conditions as set forth in the body of the appraisal. The analyst was engaged by the Lee County Department of Public Works/County Lands to perform the analysis. A copy of the supplemental task authorization is contained within the addenda to this report.

Should you have any questions regarding this or any other matter, please do not hesitate to call upon us.

Respectfully submitted,

CARLSON, NORRIS AND ASSOCIATES, INC.



J. Lee Norris, MAI, SRA
State Certified General Appraiser #0000643

JLN/lkm

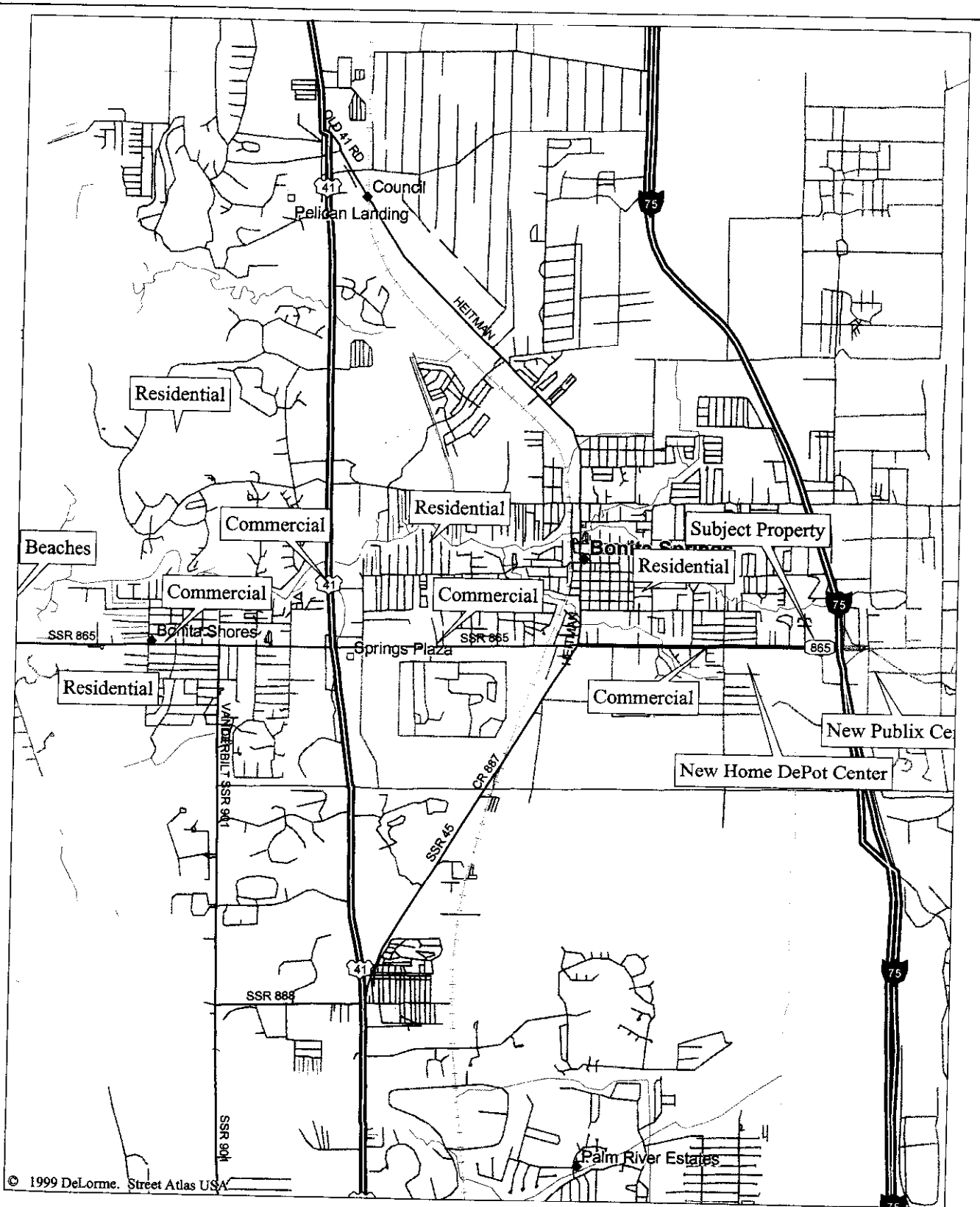
5-Year Sales History

Parcel No. 300

Bonita Beach Road Widening,
Project No. 4044

| Grantor | Grantee | Price | Date | Arms Length Y/N |
|--|--|-----------|----------|--------------------|
| William Fitzgerald, Tr. Bonita Gateway Land Trust dated March 5, 1998 | A.S. Crisafulli & Dorothy Crisafulli, Tr of the Dorothy Crisafulli Trust dated July 10, 1991 | \$900,000 | 04/29/98 | Y |

NOTE: Transaction is parent tract of 10 acres.



MARKET AREA MAP