

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

Blue Sheet No. 20030117

1. REQUESTED MOTION:

ACTION REQUESTED: Authorize the Division of County Lands to make a binding offer to property owner in the amount of \$2,800.00, for Parcel 119, Palmetto Extension, Project No. 4073, pursuant to the terms and conditions set forth in the Purchase Agreement; authorize Chairman on behalf of the BoCC to execute Purchase Agreement if offer is accepted by Seller; authorize the Division of County Lands to handle and accept all documentation necessary to complete this transaction and payment of all recording fees.

WHY ACTION IS NECESSARY: The Board must formally authorize the making of a binding offer to a property owner pursuant to F.S. §73.015 prior to initiation of condemnation proceedings.

WHAT ACTION ACCOMPLISHES: Makes binding offer to property owner as required by F.S. §73.015, as amended.

2. DEPARTMENTAL CATEGORY: 06

COMMISSION DISTRICT #: 2 AND 5

CLF

3. MEETING DATE:

02-18-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON

TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE 73.125
- ORDINANCE
- ADMIN.
- OTHER Resolution of Necessity
Blue Sheet No. 20020762 and Interlocal Agreement Blue Sheet No. 20020586

6. REQUESTOR OF INFORMATION

- A.
- B. DEPARTMENT Independent Division
- C. DIVISION County Lands
- BY Karen L.W. Forsyth, Director

1-29-03
KLF

7. BACKGROUND:

The Division of County Lands has been requested by the Department of Transportation and the City of Fort Myers to acquire property that is necessary for the Palmetto Extension, Project No. 4073.

This acquisition consists of vacant property, further identified as part of 3545 Canal Street, Ft. Myers, FL (STRAP Number 19-44-25-05-00015.0230).

F.S. §73.015, as amended, requires the County to submit a binding offer to the property owner prior to the initiation of condemnation proceedings. The County obtained an appraisal dated January 11, 2003, performed by J. Lee Norris, MAI, SRA, indicating a value of \$2,300.00. The binding offer to the property owner, Martin J. Flynn is for \$2,800.00. Should the property owner agree to accept this offer, condemnation proceedings will not be required. If the property owner elects not to accept this offer, then condemnation proceedings may be commenced.

Staff is of the opinion that the purchase price increase of \$500.00 above the appraised value can be justified considering the costs associated with condemnation proceedings, estimated between \$3,000- \$5,000 excluding land value increases and attorney fees.

Staff recommends the Board approve the Requested Motion.
Funds are available in City of Fort Myers Acct # 310-4315-541-6100

ATTACHMENTS:

- Purchase and Sale Agreement
- In-House Title Search
- Appraisal Letter
- Sales History
- City Engineer Approval

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
<i>K. Forsyth</i>		N/A	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

2-4-03
Rec. by CoAtty
Date: 2/4/03
Time: 11:45 am
Forwarded To:
CO. ADM.
2/4/03 LPH

RECEIVED BY
COUNTY ADMIN.
2-4-03
2:20
COUNTY ADMIN.
FORWARDED TO:
[Signature]

This document prepared by
Lee County Division of County Lands
Project: Palmetto Extension Project
Parcel: 119
STRAP No.: 19-44-25-05-00015.0230

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 _____, 2003 by and between **Martin J. Flynn**, hereinafter referred to as SELLER, whose address is 5512 River Bay Drive, Punta Gorda, FL 33950 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 **0.03 acres** more or less, and located at **3545 Canal Street, Fort Myers, FL** 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 Palmetto Extension, 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 **Two thousand eight hundred and no/100 dollars (\$2,800.00)**, 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 **\$2,800.00**, 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:

SELLER:

Martin J. Flynn (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)

August 19, 2002

DESCRIPTION

**PARCEL IN
SECTION 19, TOWNSHIP 44 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA**

PARCEL NO. 119

PARENT STRAP NO. 19-44-25-05-00015.0230

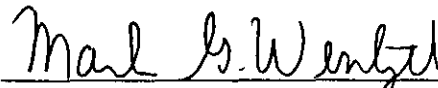
A tract or parcel of land located in Lot 24, Block 15, City View Park No. 3 as recorded in Plat Book 6 at Page 32 of the Public Records of Lee County, Florida, lying in Section 19, Township 44 South, Range 25 East, Lee County, Florida, which tract or parcel is described as follows:

From the northeast corner of said Lot 24 run S 00° 58' 24" E along the east line of said Lot 24 for 106.69 feet to a point of curvature; thence run southwesterly and westerly along an arc of a curve to the right of radius 25.00 feet (delta 89° 47' 18") (chord 35.29 feet) (chord bearing S 43° 55' 15" W) for 39.18 feet to an intersection with the south line of said Lot 24 and a point of tangency; thence run S 88° 48' 54" W along said south line for 16.39 feet; thence run N 48° 25' 33" E for 39.91 feet; thence run N 00° 58' 24" W for 105.74 feet to an intersection with the north line of said Lot 24; thence run N 88° 48' 42" E along said north line for 11.00 feet to an intersection with the east line of said Lot 24 and the Point of Beginning.

Parcel contains 1,706 square feet, more or less.

SUBJECT TO all easements, reservations, restrictions and right-of-ways of record.

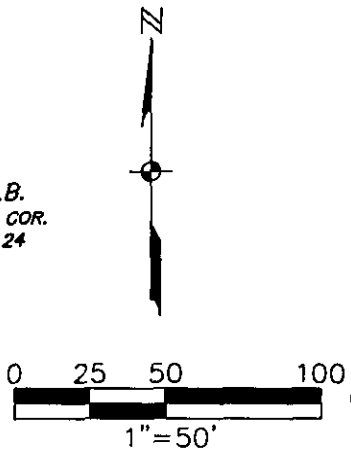
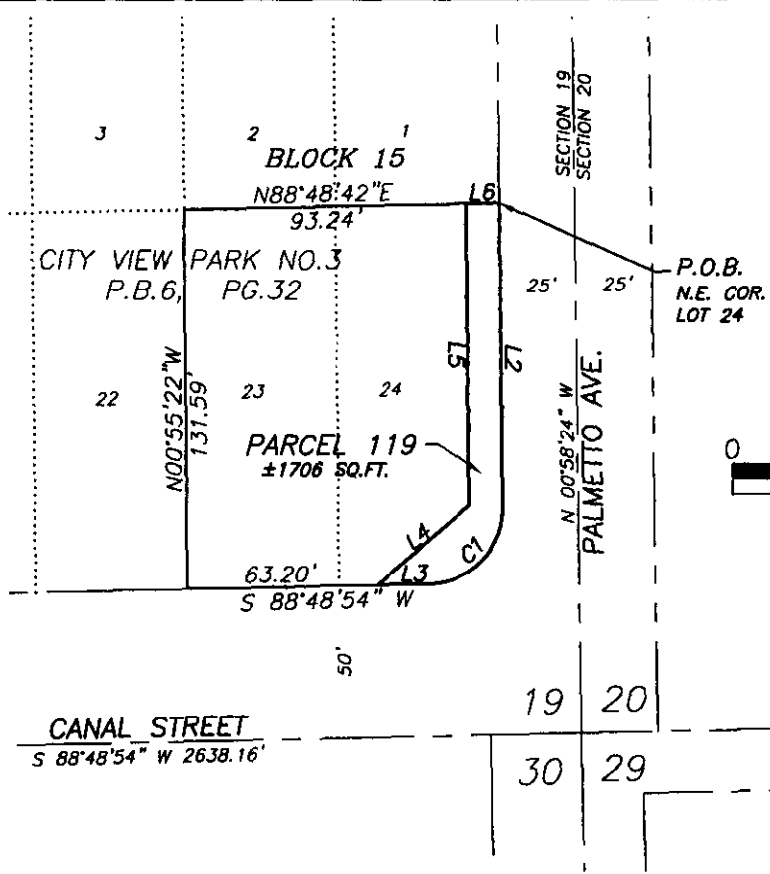
Bearings hereinabove mentioned are based on the east line of Section 19, Township 44 South, Range 25 East to bear N 00° 58' 24" W.



Mark G. Wentzel (For The Firm LB-642)
Professional Land Surveyor
Florida Certificate No. 5247

19991321\Parcel No. 119 - 081902

u:\1999\1321\surveying\outocad\Legal Sketches\Draw119.dwg



- LEGEND**
- COR. = CORNER
 - DESC. = DESCRIPTION
 - FD. = FOUND
 - L.B. = LAND SURVEYOR BUSINESS
 - MON. = MONUMENT
 - O.R. = OFFICIAL RECORD
 - P.B. = PLAT BOOK
 - PG. = PAGE
 - P.O.B. = POINT OF BEGINNING
 - P.O.C. = POINT OF COMMENCEMENT
 - R. = RANGE
 - T. = TOWNSHIP

CURVE TABLE					
CURVE	RADIUS	DELTA	LENGTH	CHORD	CHORD BEARING
C1	25.00	89°47'18"	39.18	35.29	S43°55'15"W

LINE TABLE		
LINE	LENGTH	BEARING
L2	106.69	S00°58'24"E
L3	18.39	S88°48'54"W
L4	39.91	N48°25'33"E
L5	105.74	N00°58'24"W
L6	11.00	N88°48'42"E

- NOTES:**
- SUBJECT TO ALL EASEMENTS, RESERVATIONS, RESTRICTIONS AND RIGHTS OF WAY OF RECORD.
 - BEARINGS ARE BASED ON THE EAST LINE OF LOT 24 BLOCK 15 OF CITY VIEW PARK NO.3 AS RECORDED IN P.B.6, PG.32 OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA AS BEING N00°58'24"W.
 - PARCEL CONTAINS 1706 SQUARE FEET, MORE OR LESS.

THIS IS NOT A SURVEY

Mark G. Wentzel
 MARK G. WENTZEL (FOR THE FIRM - L.B.#42)
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA CERTIFICATE NO. 5247
 DATE SIGNED: 8/21/02

PARCEL NO. 119
 PARENT STRAP NO. 19-44-25-05-00015.0230
 PART OF LOT 24, BLOCK 15
 CITY VIEW PARK NO. 3
 (PLAT BOOK 6, PAGE 32, LEE COUNTY RECORDS)
 SECTION 19, T.44 S., R.25 E.
 LEE COUNTY, FLORIDA



3501 DEL PRADO BOULEVARD
 SUITE 110
 CAPE CORAL, FLORIDA 33904
 PHONE (941) 334-0048
 FAX (941) 541-1303
 E.B. #642 & L.B. #642

SKETCH TO ACCOMPANY
 DESCRIPTION

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
08-07-02	19991321	19-44-25	1"=50'	1

Division of County Lands

Second Updated In House Title Search

Search No. 21881/D


Date: July 25, 2002

Parcel: ~~4~~ 119

Project: Palmetto Extension Project
4073

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

From: Linda K. Fleming, CLS, SR/WA *LKF*
Real Estate Title Examiner

No charges as of 1/14/03 

STRAP: 19-44-25-05-00015.0230

An update has been requested of In House Title Search No. 21881/D which covers the period beginning January 1, 1940, at 8:00 a.m. and is now complete through July 16, 2002, at 5:00 p.m.

Subject Property: Lots 23 and 24, Block 15, City View Park, No. 3, according to the map or plat thereof recorded in Plat Book 6, Page 32, of the Public Records of Lee County, Florida.

Title to the subject property is vested in the following:

Martin J. Flynn

Subject to:

1. Title to oil, gas and mineral rights and leases on subject property is specifically omitted from this report.

NOTE: We find no documentation as to when and how Martin J. Flynn received title. Grantor and Grantee Indexes were checked, and Tract Books were examined; both in the plat and underlying area and nothing was found. The Court house records indicate Martin J. Flynn has been paying taxes prior to 1935 until present time.

Tax Status: 2001 taxes have been 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.

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

January 11, 2003

Lee County/City of Fort Myers
P.O. Box 398
Fort Myers, Florida 33902
Attention: Robert Clemens

Re: Vacant Land - Partial Take
Parcel 119 - Palmetto Extension
Fort Myers, Florida

Dear Mr. Clemens:

In accordance with your request, we have inspected the above referenced property for the purpose of estimating the market value of the larger parcel, the remainder parcel thereby yielding a value for the part taken. This parcel is within the alignment of the Palmetto Extension Right of Way.

The larger parcel contains road frontage on the north side of Canal Street just east of Highlands Avenue. The larger parcel contains 13,624 square feet. The remainder parcel is estimated to contain 11,918 square feet. Based upon documentation provided to the appraiser the part taken contains 1,706 square feet.

This analysis has utilized the most current market value definition which is contained within the attached appraisal report. The site is being valued under market conditions existing as of the last date of physical inspection of the property. As per your request this is a **Complete-Summary Appraisal Report** which presents summary data and analysis that were used in the appraisal process to develop the appraiser's opinion of value. As this is a complete appraisal, the departure provision of the Uniform Standards of Professional Appraisal Practice was not invoked.

Based on market conditions existing as of the date of appraisal and in consideration of the property as it existed on this date, it is our opinion the subject property (a partial take parcel) warranted a market value in fee simple ownership on January 6, 2003 of:

TWO THOUSAND THREE HUNDRED DOLLARS (\$2,300.00).

This value represents all property rights to be acquired including all legally compensable diminution in value to the remaining land. No special benefits to the remainder are considered.

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 Government in association with the City of Fort Myers to prepare the appraisal of the subject property.

Mr. Robert Clemens
January 11, 2003
Page 2

If you should have any questions relating to this or any other matter, please do not hesitate to call upon us.

Respectfully submitted,

CARLSON, NORRIS AND ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "J. Lee Norris". The signature is fluid and cursive, with a large initial "J" and "N".

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

5-Year Sales History

Parcel No. 119

Palmetto Extension Project, No. 4073

NO SALES in PAST 5 YEARS

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



BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: 239.479.8605
239.479.8391 FAX

Bob James
District One

VIA FAX TO 332-6604

Douglas M. Di. Gerry
District Two

January 27, 2003

Ray Judah
District Three

Andrew W. Coy
District Four

Saeed Kazemi, P.E. City Engineer
City of Fort Myers
P.O. Box 2217
Fort Myers, FL 33902-2217

John E. Albion
District Five

Donald D. Stilwell
County Manager

RE: PARCEL 119, PALMETTO EXTENSION PROJECT
Request for review and sign-off on acquisition proposal

James G. Yeager
County Attorney

Diane M. Parker
County Hearing
Examiner

Dear Saeed:

The appraisal for parcel 119 has been reviewed and approved by County Staff and we are preparing to request Board approval to make a binding offer. Below is the relevant data for this parcel. Please review and approve on behalf of the City as well as confirm that funds are available. Thank you.

Sincerely,

Michele S. McNeill, SR/WA
Property Acquisition Agent

Parcel 119

Property Owner: Cleopatra Berner
Appraiser: Carlson Norris and Associates, Inc.
Appraisal Date: 1/11/03
Appraised Amount: \$2,300
Binding Offer Amount: \$2,800

Binding Offer Approved:

Funds are available in account:

Saeed Kazemi, P.E.
City Engineer, City of Fort Myers

310-#315-541-4100