




OFFICE OF THE COUNTY ADMINISTRATOR

MEMORANDUM

TO: The Honorable Chairman and Members of the Board of County Commissioners

FROM: Stephen M. Spratt County Administrator 

DATE: July 13, 2007

SUBJECT: Summary Report on Acquisition of Tarpon Woods / Smith Property

DISTR.: Susan H. Churuti, County Attorney
Peter J. Yauch, Assistant County Administrator

Attached is a staff-prepared summary report on the acquisition of the James H. Smith, Jr., property in the Tarpon Woods area.

While the report indicates that the property was acquired to serve a useful public purpose at an independently established fair market price, consistent with County procedures and supported by competent data and an independent appraisal, two recommended actions have been identified:

- Form an independent expert review team, comprised of public and private sector individuals with experience in real estate appraisal and acquisition, to review both the specifics of this parcel acquisition, as well as the current procedures and practices used by the County for property acquisition, sale, and exchange. This team would make recommendations, as appropriate, for adoption by the Board and Public Works. A concept for this team is attached.
- Staff should pursue the acquisition of maintenance easements along natural drainage corridors to ensure appropriate access to those corridors.

Should you have any questions or concerns, please do not hesitate to contact either Pete Yauch or myself.

Summary Report on Acquisition of Tarpon Woods / Smith Property

This report has been prepared to document the facts and events leading up to and during the acquisition of a parcel of land owned by James H. Smith, Jr., Pinellas County Property Appraiser, by Pinellas County. This parcel is located on the south side of Tarpon Woods Boulevard, immediately adjacent to the bridge over Brooker Creek. Brooker Creek itself runs through the parcel.

Work on the Smith Property by Public Works

Within the Tarpon Woods area, along Brooker Creek, street flooding is a recurring problem during major rain events. Thirty-two square miles of the Brooker Creek watershed flow through Tarpon Woods, which was initially constructed in a natural floodplain.

Four hurricanes (Charley, Frances, Ivan, and Jeanne) affected the Pinellas County area during the summer of 2004. The associated heavy rains and strong winds resulted in flooding, downed trees and limbs, and other damage throughout the county, including the Tarpon Woods area.

With the 2004 storms, Brooker Creek overflowed, as the rainfall over the watershed exceeded the capacity of the creek. The flooding dislodged pre-existing and hurricane-related debris and concentrated the debris at natural and man-made restrictions along the creek, further restricting the capacity of the creek to carry stormwater out of the area.

Brooker Creek runs through the Smith property, immediately south of and adjacent to the Tarpon Woods Boulevard bridge over the creek. The bridge is one of the restrictions along the creek, resulting in a concentration of debris in and around the bridge, including on the Smith property.

Pinellas County Public Works Highway (Highway) forces (including some contracted crews with specialized equipment) were assigned to clear the restrictions along Brooker Creek, working under a series of general Emergency Executive Orders issued by the Southwest Florida Water Management District (SWFWMD) in August, September, and October of 2004. The County's notification to SWFWMD, on September 28th, 2004, included work at the Tarpon Woods Boulevard bridge over the creek. This does not specifically reference the parcel ownership, but it was interpreted by Highway to include this area. Highway's assignment was to restore the stormwater carrying capacity of Brooker Creek by removing debris and accumulated sedimentation caused by the storms.¹

¹ A presentation summarizing these work efforts was made by Mr. Jorge Quintas, P.E., Director of Engineering for Public Works, to the Board of County Commissioners at their work session on September 27, 2005 (Agenda Item 3).

During the course of their activities, between January and May, 2005, Highway crews entered the Smith property to gain access to and to work along the creek. They removed debris and downed or fallen trees in proximity to the creek, but did not remove any standing trees. Using excavating equipment, they removed some sediment from the creek and overflow area that formed a bypass area around a bend in the creek; under their directions, any major amount of sediment removed would have been trucked away, so there would not have been an increase in upland area on the parcel. There was no clearing or other improvements done on the parcel other than what was necessary to restore water flow along the creek.

Highway crews did not secure advance approval for access to the creek from the owner of the parcel, Mr. Smith, as would normally be standard procedure. The work along the creek, and other creeks being cleared concurrently, impacted approximately 300 – 400 parcels, and under the flooding conditions, the work to clear the creek was considered to be time critical, and the SWFWMD Emergency Executive Orders were interpreted by Public Works staff to be the necessary authorization to perform the work along the creek.

Subsequently, it was also determined that the County did not have a written drainage maintenance easement along the creek within the Smith parcel. However, prior practice, which had been understood to have had support by the County Attorney's office, had been that access to a natural drainage creek under emergency conditions did not require an easement. The County Attorney's Office presently does not support that interpretation. To access this parcel for the emergency drainage work was not a deviation from established procedures.

Responding to a complaint from Mr. Smith in or about September 2005, Mr. John Holt, P.E., at that time Assistant Director of Highways, talked to Mr. Smith and discussed the work on the property, and apologized on behalf of the County. Mr. Holt noted that no live trees were removed by the County and that the County was committed to correct any concerns. After a field review, Mr. Holt called back and left a message for Mr. Smith at his office, but Mr. Smith did not return the phone call.

Further investigation by Mr. Holt indicated that Progress Energy crews (or emergency crews from other electrical utilities assisting in the clean-up) may have removed some trees that were either in danger of or had fallen across their power lines, which run along the western edge of the Smith property. Mr. Smith disputes the causation of his damages.

Mr. Smith's Complaint to Pinellas County

In a letter dated March 13, 2007, to County Administrator Stephen M. Spratt, attorney James A. Helinger, Jr. stated that he had been retained by Mr. Smith to seek compensation from Pinellas County for the "unauthorized appropriation of a portion of his 1.466 acre wooded, custom home site overlooking Brooker Creek". The letter also requested that the County purchase the parcel so that Mr. Smith would have adequate funds to seek an alternate piece of property. This was logged in the County

Administration Tracking System (CATS) as item 20619, and was assigned to Peter J. Yauch, P.E., the newly appointed Assistant County Administrator overseeing Public Works.

County practice has been, when a demand from an attorney such as this has been received, to forward the request directly to the County Attorney's office for their handling. However, upon Mr. Yauch's initial contact with Mr. Smith, Mr. Smith noted that he had not seen or authorized the letter from Mr. Helinger but had discussed the concern with him. Mr. Smith said that he preferred to work directly with County staff to reach a resolution. The County Administrator advised the County Attorney of the Helinger letter and provided a copy to her office. She concurred with staff attempting to reach a negotiated settlement with Mr. Smith.

Mr. Smith and Mr. Yauch went to the site together on March 30, joined by Mr. John Amiro of Highway, who was familiar with the field efforts related to the Brooker Creek work. Mr. Smith identified three primary concerns, which were inserted into the CATS log:

- Trees had been cut down, which now provided a visual opening so that the home site has a view of a nearby condominium complex. He felt this ruined the serenity and secluded nature of the property. Mr. Amiro noted that Progress Energy did have to clear trees from around their easement after a couple of trees pulled down wires from the pole line.
- The bank on the east side of the canal had been cut down into a ramp. This appeared to be a launching point for a small boat, and truck / trailer tire marks were noted in the grass. Mr. Amiro did not believe this condition was caused by Highway's maintenance work.
- A bypass canal had been dug to straighten out the channel of the creek. Mr. Smith felt that this may have damaged some existing trees. Mr. Amiro noted that the work done was while most of this area was under standing water due to flooding.

Mr. Smith noted that the parcel was listed for sale (and there was a realtor sign posted at the front of the property, facing Tarpon Woods Boulevard) and that he would be willing to sell the parcel to the County for less than the asking price if it could be used for stormwater maintenance access.

Mr. Yauch contacted Ms. Jan Herbst, P.E., Director of Public Works, and asked if Public Works had a need for the property for stormwater maintenance access, and the response was in the affirmative. Ms. Herbst was then asked to get an appraisal underway to determine the value of the property.

The Appraisal Process and Real Estate Transaction

On April 5th, 2007, a bid request for an appraisal was faxed by the County's Real Estate Division (Real Estate) to four appraisers on the County's approved appraiser list. Based upon the price proposal and a commitment to a four week timeframe for completion, the firm of McCormick, Braun, & Seaman, Real Estate Appraisers & Consultants, of St. Petersburg was selected to perform the appraisal. McCormick, Braun, & Seaman has been in business since January 1996; it represents a merger with Glenn E. McCormick Company, Inc., which dates back to May, 1985. Scott W. Seaman shows over 23 years of experience in the development of appraisals.

Real Estate provided background information to McCormick, Braun, & Seaman for their analysis, including:

- A preliminary environmental assessment of the parcel prepared by Mr. Steven Robinson of the Environmental Support Services Section of Pinellas County Environmental Management. As part of his analysis, Mr. Robinson estimated the percentage of wetlands within the parcel as 30% (70% uplands).
- A site plan for the parcel prepared for Mr. Smith in 1996 and approved by Pinellas County Development Review Services (DRS, now BDRS), which clearly established the development potential for the site.
- Mr. Charles Norwood, P.L.S., Director of Geographic Services for the County (and who has oversight over both Real Estate and Survey divisions of Public Works), provided confirmation of the 70% uplands figure based upon his familiarity with a 2005 survey that indicated a comparable figure of 63% (measured from top of bank). He also walked the site for a field inspection.

As part of his development of the appraisal, Mr. Seaman contacted the listed realtor for the property, who indicated that the list price was \$ 400,000, but that they would take offers.

On April 26th, Real Estate received a draft version of the appraisal which indicated that the appraised value was \$ 290,000. Real Estate reviewed the draft report and contacted the Mr. Seaman and requested that he make sure that he took the wetlands into full consideration. The following day, Real Estate received an updated draft appraisal for \$ 250,000. This report was distributed for review within Real Estate.

The appraisal was provided to Mr. Smith for his review, and a verbal indication of the County's intent to offer \$ 200,000 was made to Mr. Smith by Mr. Yauch. Mr. Smith responded with a verbal counter of \$ 225,000, and Mr. Yauch directed Real Estate to prepare a written purchase contract for \$ 225,000, which was 10 percent below the appraised value.

The contract was executed by Mr. Smith on May 18th, 2007, and was placed on the Board of County Commissioners' meeting agenda of June 5th, 2007, for approval. The Board unanimously approved the purchase.

A closing date was set for June 29th, 2007. On June 22nd, subsequent to reports that Theresa Blackwell of the St. Petersburg Times was questioning the appropriateness of the appraisal, Mr. Yauch directed Mr. Norwood to procure the services of an independent appraiser to perform a review appraisal on the appraisal performed by Mr. Seaman. The scope of this review was to determine if the original appraisal was performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), a nationally accepted standard for real estate appraisers to follow in developing their evaluations.

This was assigned to Mr. Gregory G. Johnson, of OMNI Realty Group, Inc., of Palm Harbor. OMNI Realty Group has been in business since January 1990; Mr. Johnson's resume indicates that he has been an appraiser since 1976. Mr. Johnson committed to having the review report completed by July 2nd, 2007.

Mr. Yauch advised staff of his intention to delay the closing until after receiving the review report. However, Mr. Crowell of the County Attorney's Office advised against delaying the closing beyond the agreed-upon date, noting that the contract was a legally binding document upon the approval of the Board, and the failure to close once the conditions precedent were met and the closing had been scheduled could be viewed as bad faith. County Attorney Susan Churuti was advised and concurred.

Mr. Johnson was requested to provide a verbal report of his review in advance of the July 2nd date, if possible, and on the morning of June 29th, Mr. Johnson provided a verbal report that his review of the appraisal by Mr. Seaman met the minimum USPAP standards. Based upon that indication, the closing commenced as scheduled at 11:00 AM on June 29th.

The County Attorney's Office has reviewed the appraisal process on this transaction and determined that it complies with Pinellas County's policies and all applicable Florida law.

Conclusions and Findings

There did exist, and still remains, a valid public purpose need for the subject parcel, to carry out flood control activities in a highly flood prone area. The parcel is uniquely situated adjacent to a collector road bridge on a section of creek historically known to accumulate debris, which blocks drainage – and which could cause structural damage to the bridge. Public ownership will allow for equipment staging and access for maintenance, and mitigation for the loss of wetlands. This need was established prior to negotiating the purchase and has been documented by administrators in both the Surface

Water Management and Highway Divisions of Public Works. There is no other location to access the creek between Tarpon Woods Boulevard and East Lake Road.

The use of funds for the purchase was consistent with the Board-approved annual budget appropriation entitled "Contingency Roadway and Right-of-Way Requirements" (PID 104).

The contracted appraisals performed to support the purchase price were done by competent and well-qualified local firms selected from the County's approved appraiser list. The review appraisal confirmed that the initial appraisal met the minimum national standards for an appraisal.

Field inspections of the property were made by the Department of Environmental Management and Public Works staff. Adequate elevation and survey data existed and was reviewed to establish the development potential and, therefore, property value. The senior department manager overseeing the transaction, Charles Norwood, a Registered Professional Land Surveyor, personally reviewed the survey data and also inspected the property. A site plan approved by DRS in 1996 for Mr. Smith confirmed that the site has development potential for a single family residence.

Maintenance work performed by County forces in 2004 and 2005 was a direct response to flooding conditions experienced during the 2004 hurricane season. The work was authorized by an Emergency Order by SWFWMD in August, September, and October, 2004. Work performed on the site was limited to the removal of downed trees and accumulated debris and sediment, in order to restore water flow. There was not any removal of standing large trees or the addition of upland fill.

There did not exist a written drainage maintenance easement on the property, and County forces did not secure Mr. Smith's advance approval for access to the property prior to the maintenance work being performed. Prior practice, which had been supported by the County Attorney's office, had been that access to a natural drainage creek under emergency conditions did not require an easement. More recent discussions with the County Attorney's office present a different position. However, given the emergency conditions and the number of parcels involved, work proceeded along the creek and on Mr. Smith's parcel as had been the previously accepted procedure.

This prior authorization protocol is an area in need of improvement. Public Works has been directed to begin a process to ensure that easements are obtained for all major drainage features in the County that must be reached through private property.

Mr. Smith made contact with Public Works staff in or about September 2005 to complain about damages to his property. Mr. Holt discussed with him and apologized on behalf of the County, and committed to correct any problems. Mr. Holt attempted to call Mr. Smith back to provide an update, and did not receive a return phone call from Mr. Smith.

In March, 2007, Mr. Smith, through his attorney, brought his concerns to County Administrator Stephen Spratt. Mr. Spratt referred the matter to Assistant County Administrator Pete Yauch for resolution as appropriate. County Attorney Susan Churuti was made aware of the complaint and urged County staff to negotiate an amicable resolution to avoid litigation. This course of action is the County's customary practice to resolve a dispute with an adversely impacted property owner as a result of some County action.

Mr. Smith, personally and through his attorney, had offered sale of the property as an approach to settlement. An appraisal of the property was initiated based upon recommendations from Public Works that the County could utilize the property – and not based on Mr. Smith's elected position in County government.

In summary, the property will serve a useful public purpose, was acquired at an independently established fair market price, consistent with county procedures and supported by competent data and an independent appraisal which was subsequently reviewed and found to meet professional appraisal standards.

Recommended Actions

Based upon the issues raised during this review, the following actions are recommended:

- Form an independent review team, comprised of public and private sector individuals with experience in real estate appraisal and acquisition, to review both the specifics of this parcel acquisition, as well as the current procedures and practices used by the County for property acquisition, sale, and exchange. This team would make procedural and process improvement recommendations, as appropriate, for adoption by the Board and Public Works.
- Staff should pursue the acquisition of maintenance easements along natural drainage corridors to ensure appropriate access to those corridors.

Real Estate Procedures Review Team

Objectives: To obtain an independent review of the acquisition of the James H. Smith, Jr., parcel in the Tarpon Woods area, and to review Pinellas County's procedures and practices for the acquisition, exchange, and sale of real estate, and, where appropriate, to develop recommendations for improvements to such procedures and practices.

Background: Pinellas County, as part of its core function, is required to acquire various parcels of real estate – for transportation right-of-way, protection of endangered lands, passive and active recreational purposes, and other needs. In addition, the County also disposes of surplus property when it is no longer needed for County purposes. Ensuring that the County purchases and sells property at a reasonable and fair price, as efficiently as possible, is important to the maintenance of public trust. This review team is intended to review the existing processes and identify potential improvements to those processes to make certain that the public trust is upheld.

Proposed Actions: The following actions are proposed:

- Establish an independent advisory team to review the procedures and practices used in acquiring and disposing of real properties by Pinellas County. It is envisioned that the panel would consist of five to seven individuals that have significant experience in real estate valuation, acquisition, sale, or management; approximately half should be from public sector agencies such as:
 - o Florida Department of Transportation
 - o Pinellas County School District
 - o Tampa Bay Water
 - o Nearby County

The remainder should be from the private sector, and could include:

- o Independent appraisers
- o Developers,
- o Attorneys

None of the individuals on the team should have a business relationship with Pinellas County.

- The team should review the specifics of the acquisition of the James H. Smith, Jr., parcel in the Tarpon Woods area and identify any errors, omissions, inaccuracies, or other procedural issues that occurred in this process.
- The team should review the County's existing policies and the following aspects of the procurement process and, if appropriate, make recommendations for potential improvements:
 - o Confirmation of County's need for property
 - o Appraisal and valuation
 - o Negotiations with willing property owner

- Condemnation processes
 - Documentation
 - Typical tasks and time-line for acquisition.
- The team should review the County's existing policies and the following aspects of the sale of surplus property process and, if appropriate, make recommendations for potential improvements:
- Confirmation of County's identification of property as surplus
 - Appraisal and valuation
 - Surplus sale process
 - Documentation
 - Typical tasks and time-line for sale.

Schedule: This review process shall be completed within sixty calendar days of the date of this directive.

Responsibility: The responsibility for the organization and staffing of the team shall lie with the County Administrator, who will report status and findings to the Board of County Commissioners.