



AGENDA REPORT
October 23, 2018

**Approval Re: Contract for Sale and Purchase of Kalimnios parcel for
Kingsmill-Aurora Phase II Project - District 4. (Fiscal Impact: \$835,000.00)**

SUBJECT:

Approval Re: Contract for Sale and Purchase and Amendment 1 to Contract for Sale and Purchase of Kalimnios parcel for Kingsmill-Aurora Phase II Project - District 4.

FISCAL IMPACT:

Fiscal impact: FY 2017 – 2018: \$835,000.00* (Funding Source: 1114/260050/5610000)

FY 2018 – 2019: No impact

*\$585,000.00 transferred from reserves (Funding Source: 1114/911140/5990040)

DEPT/OFFICE:

Public Works

REQUESTED ACTION:

It is requested that the Board of County Commissioners: 1) approve and authorize the Chair to execute the Contract for Sale and Purchase and Amendment 1 to Contract for Sale and Purchase, and 2) approve associated budget change requests.

SUMMARY EXPLANATION and BACKGROUND:

The subject parcel is located in Section 18, Township 27 South, Range 37 East.

This acquisition is part of the Kingsmill-Aurora Phase II project and was approved as a multi-year SOIRL storm water treatment project. This parcel will be used for a storm water detention pond, which will be designed to reduce excess nutrients and sediments that currently discharge into the Indian River Lagoon through a major tributary to the Eau Gallie River. This project will provide an estimated reduction of 4,176 pounds per year of total nitrogen and 814 pounds per year of total phosphorus.

Fair market value was established by obtaining two appraisals; Clayton, Roper & Marshall report dated January 4, 2018 with a value of \$835,000.00 and Gulfstream Real Estate Appraisals report dated August 13, 2018 with a value of \$860,000.00. The sellers have agreed to accept the lesser value.

Pursuant to AO 37. Section III. A. 7, the information related to this acquisition was provided to the members of the Land Acquisition Review Committee. Questions related to the

impact of this acquisition upon future performance of the overall function of the drainage along the Eau Gallie River and associated canals and ditches were raised. Those questions and the potential fiscal impact related to them have been addressed by staff.

The Amendment 1 to the Contract for Sale and Purchase is to request an extension to the closing date.

Funds for this acquisition will be realigned from district storm water reserves.

Land Acquisition Policies and Procedures require approval and acceptance by the Board of County Commissioners for all contracts.

It is requested that the Board of County Commissioners:

1. Approve and authorize the Chair to execute the Contract for Sale and Purchase and the Amendment 1 to Contract for Sale and Purchase as presented and approve the associated budget change request.

or, in the alternative:

2. Reject the Contract and instruct staff to counter offer in the amount of _____.
3. Reject the Contract and instruct staff to take no further action related to this acquisition.

CLERK TO THE BOARD INSTRUCTIONS:

Return original executed Contract for Sale and Purchase, original executed Amendment 1 to Contract for Sale and Purchase and Board approval memo to Land Acquisition.

ATTACHMENTS:

Description

- **Kingsmill/Aurora Rd-Kalimnios Agenda Documents**

BOARD OF COUNTY COMMISSIONERS

AGENDA: CONTRACT FOR SALE AND PURCHASE AND AMENDMENT 1 TO
CONTRACT FOR SALE AND PURCHASE OF THE KALIMNIOS PARCEL
FOR KINGSMILL-AURORA PHASE II PROJECT- DISTRICT 4

AGENCY: NATURAL RESOURCES MANAGEMENT DEPARTMENT / LAND
ACQUISITION SECTION

AGENCY CONTACT: LUCY HAMELERS, LAND ACQUISITION SPECIALIST

CONTACT PHONE: 321-690-6847 (56316)

REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor	<u>DPJ</u>	_____	<u>10/8/18</u>
COUNTY ATTORNEY Jad Brewer Assistant County Attorney	<u>JMB</u>	_____	<u>10/8/18</u>

AGENDA DUE DATE: October 9, 2018 for the October 23, 2018 Board meeting

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.

THANK YOU.



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

October 24, 2018

MEMORANDUM

TO: Dan Jones, Interim Public Works Director

RE: Item J.1., Contract for Sale and Purchase and Amendment 1 to Contract for Sale and Purchase for the Kalimnios Parcel for Kingsmill-Aurora Phase II Project

The Board of County Commissioners, in regular session on October 23, 2018, approved and executed the Contract for Sale and Purchase and Amendment 1 to Contract for Sale and Purchase with John, Despina, and Themistocles Kalimnios for Kingsmill-Aurora Phase II Project; and approved associated budget change requests. Enclosed are fully-executed Contract for Sale and Purchase and Amendment 1 to Contract for Sale and Purchase.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration
Finance
Budget

CONTRACT FOR SALE AND PURCHASE

Seller: John Kalimnios, Despina Kalimnios and Themistocles Kalimnios

Buyer: Board of County Commissioners, Brevard County, Florida
2725 Judge Fran Jamieson Way, Viera, Florida 32940

Legal description of property being transferred: See Attached Exhibit A

The transfer shall be made pursuant to the following terms and conditions and the Standards for Real Estate Transactions, on the reverse side of this contract.

Purchase price: \$835,000.00 (Eight Hundred Thirty Five Thousand Dollars and No/100-----)

Deposit: \$100 to be transferred to an escrow account established and held by the Brevard County Clerk, such deposit to be applied to the purchase price.

Time for acceptance of offer; effective date; facsimile: If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before October 23, 2018, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn.

Title evidence: At least 15 days before closing date, [] Seller shall, at Seller's expense, deliver to Buyer or Buyer's attorney or [X] Buyer shall at Buyer's expense obtain [] a title search and/or [X] title insurance commitment (with legible copies of instruments listed as exceptions attached thereto) and, after closing, an owner's policy of title insurance.

Closing Date: This transaction shall be closed and the deed and other closing papers delivered on or before October 26, 2018, unless modified by other provisions of this Contract.

Warranties: The following warranties are made and shall survive closing. a. SELLER warrants that there are no parties in occupancy other than Seller. b. SELLER warrants there is no hazardous waste or other environmental contamination located in or upon the property being acquired by the County. Seller shall indemnify and defend Buyer from any and all claims or expenses resulting from hazardous waste or environmental contamination located in or upon the property provided such waste or contamination was not placed on the property by the Buyer. c. SELLER warrants that he/she has no knowledge of any fact or restriction which would prevent use of the property for purposes. d. SELLER hereby represents and warrants to COUNTY that SELLER has not engaged or dealt with any agent, broker or finder, in regard to this Agreement or to the sale and purchase of the property contemplated hereby.

Inspections: The BUYER shall have 60 days after the Brevard County Board of County Commissioners executes the contract within which to complete physical inspection and evaluation of the property for environmental, hazardous materials, developability, access, drainage and subsurface conditions. In the event a Phase I environmental assessment meeting ASTM standards is prepared and environmental issues objectionable to BUYER are detected, SELLER shall 1) take all steps necessary to remove BUYER'S objections prior to the expiration of the 60 day inspection period, if possible or 2) if acceptable to BUYER, SELLER shall allow an additional 90 days to provide adequate time to conduct a Phase II assessment meeting ASTM standards.

Condemnation: This property [] is [X] is not being acquired under threat of condemnation. If so, this agreement includes and settles all issues of full compensation for the property being acquired, including fees and costs.

SELLER shall comply with §196.295, Fla. Stat. SELLER hereby agrees to provide the necessary information and execute a beneficial interest and disclosure affidavit as required by §286.23, Fla. Stat.

Special Clauses: [] See attached addendum [X] NOT APPLICABLE

BOARD OF COUNTY COMMISSIONERS BREVARD COUNTY, FLORIDA [Signature] RITA PRITCHETT, CHAIR

[Signature] Date 8-18-18 (Seller) John Kalimnios

As approved by the Board October 23, 2018 Date: 10/23/18

[Signature] Date 8-18-18 (Seller) Despina Kalimnios

[Signature] Date 8/21/18 (Seller) Themistocles Kalimnios

AMENDMENT 1 TO CONTRACT FOR SALE AND PURCHASE

THIS AMENDMENT entered into this 23rd day of October, 2018, by and between the Board of County Commissioners of Brevard County, Florida and John Kalimnios, Despina Kalimnios, and Themistocles Kalimnios:

WHEREAS, the parties have previously entered into a Contract for Sale and Purchase on October 23, 2018, as authorized by the Board in regular session on October 23, 2018; and

WHEREAS, the parties desire to amend the contract to extend the closing date from October 26, 2018 to on or before November 30, 2018; and

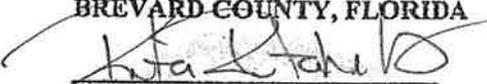
NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereby agree as follows:

The closing date shall be on or before November 30, 2018.

All other terms and conditions of the Contract for Sale and Purchase dated October 23, 2018, which is incorporated herein by this reference, not inconsistent with the provisions of this Amendment, shall remain in full force and effect.

Buyer:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

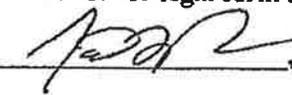

Rita Pritchett, Chair

ATTEST:

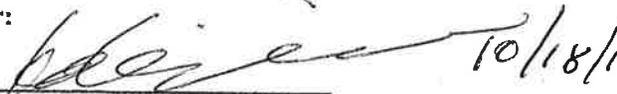

Scott Ellis, Clerk to the Board

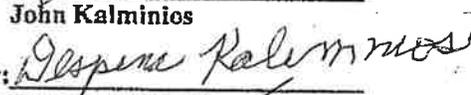
As approved on Board Meeting date: 10/23/18
Agenda Item # J.1

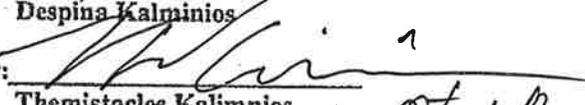
Reviewed for legal form and content:

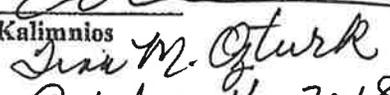
, Assistant County Attorney

Seller:

By:  10/18/18
John Kalimnios

By:  10-18-18
Despina Kalimnios

By:  1
Themistocles Kalimnios


October 16, 2018

Tina M. Ozturk
Notary Public, State of New York
No. 010Z6173478
Qualified in Suffolk County
Term Expires August 27, 2019

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. EVIDENCE OF TITLE: A title insurance commitment issued by a Florida licensed title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price insuring Buyer's title to the Real Property, subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract and those which shall be discharged by Seller at or before closing. Seller shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications specified in this Contract. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving evidence of title to examine it. If title is found defective, Buyer shall within 3 days thereafter, notify Seller in writing specifying defect(s). If the defect(s) render title unmarketable, Seller will have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within five (5) days after expiration of the thirty (30) day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall immediately be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) in the title within the time provided therefor. If Seller is unable to remove the defects within the times allowed therefor, Buyer shall either waive the defects or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligation under this Contract

B. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If survey shows encroachment on Real Property or that improvements located on Real Property encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulation, the same shall constitute a title defect.

C. INGRESS AND EGRESS: Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in the Warranties section of the agreement.

D. LIENS: Seller shall furnish to Buyer at time of closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Property for 90 days immediately preceding date of closing. If Property has been improved or repaired within that time Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at closing of this Contract.

E. TIME PERIOD: Time is of the essence in this Contract.

F. DOCUMENTS FOR CLOSING: Seller shall furnish the deed, bill of sale, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish closing statement.

G. EXPENSES: Documentary stamps on the deed, if required and recording of corrective instruments shall be paid by Seller. Buyer will pay for the cost of recording the deed.

H. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses and revenue of Property shall be prorated through day before closing. Buyer shall have the option of taking over any existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at closing shall be increased or decreased as may be required by prorations. Prorations will be made through day prior to occupancy if occupancy occurs before closing. Advance rent and security deposits will be credited to Buyer and escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on the Real Property by January 1st of year of closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration available exemptions. Any tax proration based on an estimate shall, at request of either Buyer or Seller, be subsequently readjusted upon receipt of tax bill on condition that a statement to that effect is in the closing statement.

I. SPECIAL ASSESSMENT LIENS: Certified, confirmed and ratified special assessment liens as of date of closing (not as of Effective Date) are to be paid by Seller. Pending liens as of date of closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate of assessment for the improvement by the public body.

J. PROCEEDS OF SALE; CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If abstract of title has been furnished, evidence of title shall be continued at Buyer's expense to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last evidence. Proceeds of the sale shall be held in escrow by Seller's attorney or by another mutually acceptable escrow agent for a period of not more than 5 days after closing date. If Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5-day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect. If Seller fails to timely cure the defect, all deposit(s) and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale. If Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale. The escrow and closing procedure required by this Standard shall be waived if title agent insures adverse matters pursuant to Section 627.7841, F.S. (1993), as amended.

K. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposit(s), the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach. In the event of any litigation arising out of this contract, each party shall bear its own attorney's fees and costs. The parties hereby agree to waive trial by jury.

L. CONVEYANCE: Seller shall convey title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller. Personal Property shall, at request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

M. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

N. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed.

Reviewed for legal form and content:

_____, (Assistant) County Attorney

Seller's Initials: AK PR T.K.

EXHIBIT A

A PARCEL OF LAND BEING A PORTION OF LOT 4 AND ALL OF LOTS 1, 2, AND 3, MAP OF BLAKE PLAT NO. 6 ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 9, PAGE 29 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA AND BEING LOCATED WITHIN THE WEST HALF OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 18, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE NORTH 89° 45' 09" EAST ALONG THE NORTH LINE OF SAID LOT 4, SAID LINE ALSO BEING THE SOUTH RIGHT OF WAY LINE OF AURORA ROAD FOR A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE NORTH 89° 45' 09" EAST ALONG THE NORTH LINE OF SAID LOTS 1, 2, 3 AND 4, SAID LINE ALSO BEING THE SOUTH RIGHT OF WAY LINE OF SAID AURORA ROAD, FOR A DISTANCE OF 224.63 FEET; THENCE DEPARTING SAID NORTH LINE, RUN SOUTH 00° 55' 19" EAST ALONG THE EAST LINE OF SAID LOT 1 FOR A DISTANCE OF 682.68 FEET; THENCE DEPARTING SAID EAST LINE, RUN SOUTH 89° 43' 17" WEST ALONG THE SOUTH LINE OF SAID LOTS 1, 2, 3, AND 4 FOR A DISTANCE OF 254.78 FEET; THENCE DEPARTING SAID SOUTH LINE, RUN NORTH 00° 54' 33" WEST ALONG THE WEST LINE OF SAID LOT 4 FOR A DISTANCE OF 259.17 FEET; THENCE DEPARTING SAID WEST LINE, RUN NORTH 76° 17' 29" EAST FOR A DISTANCE OF 30.76 FEET; THENCE NORTH 00° 54' 33" WEST PARALLEL TO AND 30.00 FEET EASTERLY OF THE WEST LINE OF SAID LOT 4 FOR A DISTANCE OF 416.48 FEET TO THE POINT OF BEGINNING, CONTAINING 161,287 SQUARE FEET (3.70 ACRES), MORE OR LESS.

SUBJECT TO THE FOLLOWING INGRESS-EGRESS EASEMENT:

A PARCEL OF LAND BEING A PORTION OF LOT 4, MAP OF BLAKE PLAT NO. 6 ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 9, PAGE 29 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA AND BEING LOCATED WITHIN THE WEST HALF OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 18, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE SOUTH 00° 54' 33" EAST ALONG THE WEST LINE OF SAID LOT 4 FOR A DISTANCE OF 423.64 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE DEPARTING SAID WEST LINE, RUN NORTH 76° 17' 29" EAST FOR A DISTANCE OF 22.80 FEET; THENCE SOUTH 00° 49' 06" EAST FOR

A DISTANCE OF 12.71 FEET; THENCE SOUTH 83° 28' 57" WEST FOR A DISTANCE OF 22.32 FEET TO A POINT ON SAID WEST LINE; THENCE NORTH 00° 54' 33" WEST ALONG SAID WEST LINE FOR A DISTANCE OF 9.84 FEET TO THE POINT OF BEGINNING; CONTAINING 251 SQUARE FEET (0.01 ACRES), MORE OR LESS.

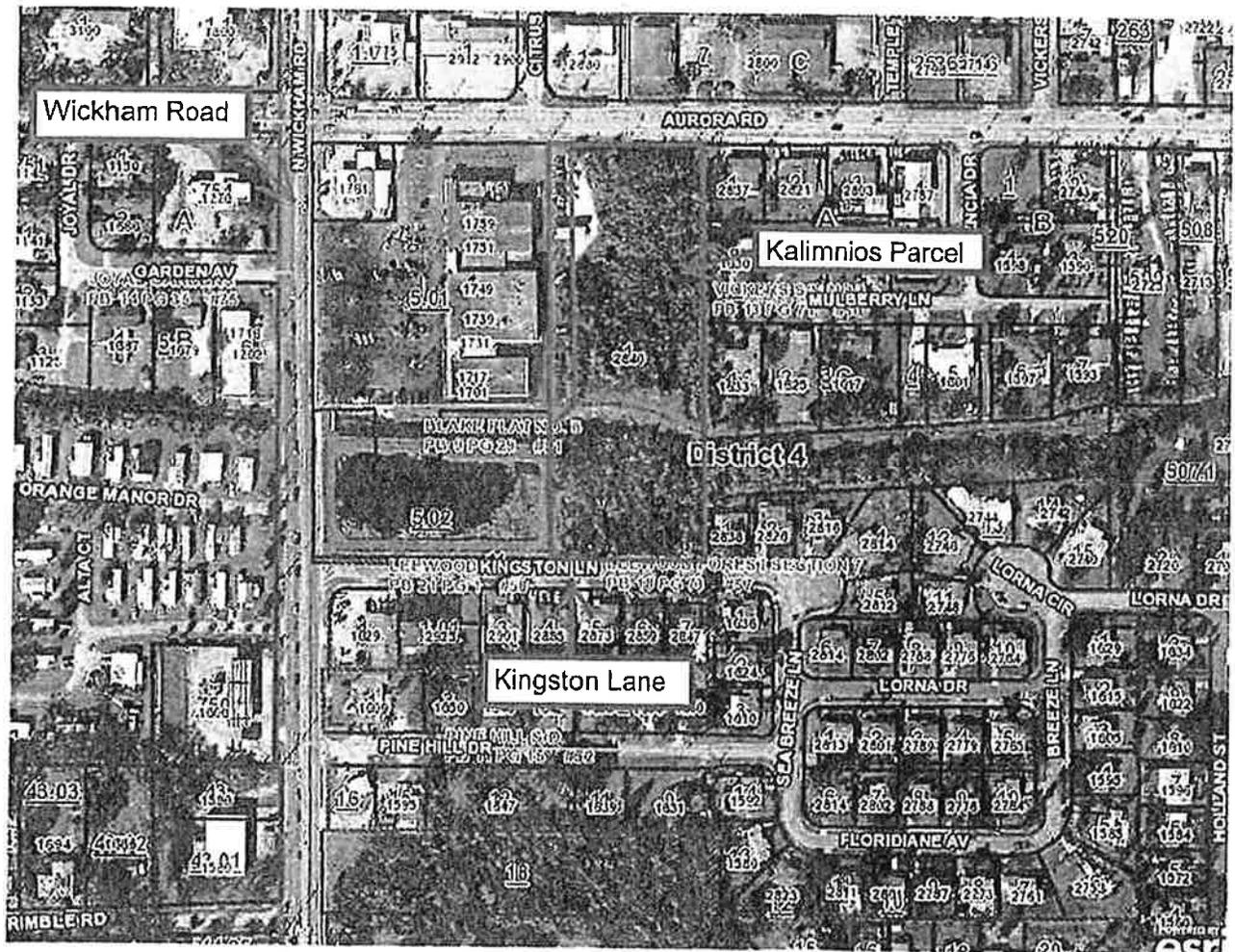
ONLY RIGHTS OF WAY AND EASEMENTS SHOWN ON APPLICABLE RECORD PLATS OR INCLUDED IN THE ABOVE REFERENCE MATERIAL ARE INDICATED HEREON. NO OTHER INFORMATION WAS FURNISHED TO THE SURVEYOR AND MAPPER. NO OPINION OF TITLE, OWNERSHIP OR UNWRITTEN RIGHTS IS EXPRESSED OR IMPLIED. ALL PUBLIC RECORDS REFERENCED HEREIN ARE PER THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

LOCATION MAP

TWP: 27 RNG: 37 SEC: 1 DISTRICT: 4

STREET NAME: 2840 Kingston Lane

OWNER'S NAME: John Kalimnios



PROPERTY FACT SHEET
PROJECT: Kingston Lane (Aurora Road) Kalimnios Parcel

OWNER:	John Kalimnios
PARCEL LOCATION:	2840 Kingston Lane, Melbourne
PARCEL SIZE:	3.94 acres – whole acquisition
ZONING/LANDUSE:	Split Zoning – Northern portion BU1; Southern Portion RU-1-7
IMPROVEMENTS:	None – Vacant Land
TOPOGRAPHY:	Level with road grade, no wetlands indicated
FLOOD ZONE:	X (outside 500-year flood)
TAX PARCEL ID#:	27-37-18-51-*-1
MARKET VALUE:	\$320,020.00 (2018 Assessment)(Property Appraiser's Records)
PUBLIC UTILITIES:	All utilities available
PROPERTY TRANSACTION: (Clerk of the Court Records)	Purchase date: January 1, 1983 Sale amount: \$639,400.00
ROPER APPRAISAL DATE: Appraisal Amount:	February 5, 2018 \$835,000.00
GULFSTREAM REAL ESTATE APPRAISALS DATE: Appraisal Amount:	August 9, 2018 \$860,000.00