



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Development and Environmental Services Group

J.1.

8/25/2020

Subject:

Approval Re: Contract for Sale and Purchase and Amendment 1 to Contract for Sale and Purchase from Property Owner Thomas J. Happel for the Basin 2420 Stormwater Drainage Improvement Project - District 4.

Fiscal Impact:

FY: 2019-2020 -\$135,000.00 Stormwater 1114 260050 5610000

Dept/Office:

Public Works Department / Land Acquisition / Natural Resources Management Department

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the attached Contract for Sale and Purchase as well as Amendment 1 to the Contract for Sale and Purchase.

Summary Explanation and Background:

The subject property is located in Section 01, Township 26 South, Range 36 East, on the east side of US Highway 1 in Rockledge.

The Natural Resources Management Department, Stormwater Program, is planning the Basin 2420 Stormwater Drainage Improvement Project. The project consists of constructing a wet detention pond that will provide water quality treatment for the twenty-five (25) acre drainage Basin 2420. The effects of the treatment will provide the removal of approximately 94.54 pounds of total nitrogen per year along the northern section of the Indian River Lagoon.

Amendment 1 to the Contract for Sale and Purchase has been written to address the concerns of the owner pertaining to the Warranties provisions in the County approved standard Contract for Sale and Purchase. The County Attorney's Office does not necessarily object to these revisions, however, the Board of County Commissioners must be made aware of the changes, approve and authorize the Chair to sign the Amendment 1 to Contract for Sale and Purchase.

An appraisal obtained on April 3, 2020, by an independent appraiser, reflects an appraised value of \$130,000.00. The parcel owner will accept a minimum of \$135,000.00.

Potential options are as follows:

1. Reject the counter offer and extend an offer to the owner in an amount to be determined by the Board at this time.
2. Accept the counter offer from the seller and instruct staff to proceed with the closing.

Staff recommends option 2. The User Department is in agreement with this request.

This acquisition follows the policies and procedures as set forth in Administrative Order 37.

Clerk to the Board Instructions:

Upon execution by the Chair, please contact Public Works Department (321-617-7202) to make delivery arrangements for the original executed Contract for Sale and Purchase with Exhibit and original executed Amendment 1 to Contract for Sale and Purchase.

BOARD OF COUNTY COMMISSIONERS

AGENDA REVIEW SHEET

AGENDA: Contract for Sale and Purchase and Amendment 1 to Contract for Sale and Purchase with Happel (Owner) for the Basin 2420 Stormwater Drainage Improvement Project – District 4.

AGENCY: Public Works Department / Land Acquisition / Natural Resources Management Department

AGENCY CONTACT: Lucy Hamelers, Land Acquisition Supervisor

CONTACT PHONE: 321-690-6847 extension 58336

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor			<u>7-30-2020</u>
COUNTY ATTORNEY Christine Schverak Assistant County Attorney			<u>7-31-2020</u>

AGENDA DUE DATE: August 18, 2020 for the August 25, 2020 Board meeting



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

August 26, 2020

MEMORANDUM

TO: Marc Bernath, Public Works Director Attn: Lucy Hamelers

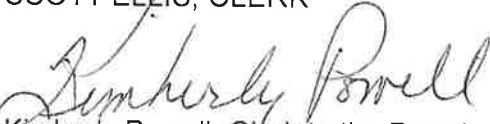
RE: Item J.1. Approval of the Contract for Sale and Purchase and Amendment 1 to the Contract for Sale and Purchase from Property Owner, Thomas J. Happel for the Basin 2420 Stormwater Drainage Improvement Project

The Board of County Commissioners, in regular session on August 25, 2020, executed and approved the Contract for Sale and Purchase and Amendment 1 to the Contract for Sale and Purchase of property as described in Exhibit A, from property owner, Thomas J. Happel for the Basin 2420 Stormwater Drainage Improvement Project. Enclosed is the fully-executed Contract and Amendment.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK


Kimberly Powell, Clerk to the Board

/cld

Encls. (2)

cc: Natural Resources Management
Finance
County Manager
Budget

CONTRACT FOR SALE AND PURCHASE

Seller: Thomas J. Happel, as Successor Trustee of the Dolores J. Happel Revocable Living Trust dated May 15, 2008
5041 Scott Road, Cocoa, Florida 32926

Buyer: Brevard County, Florida, a political subdivision of the State of 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: \$135,000.00 (One 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 September 15, 2020, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed this offer. A facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as originals.

Title evidence: At least 15 days before closing date, ☐ Seller shall, at Seller's expense, deliver to Buyer or Buyer's attorney or ☒ Buyer shall at Buyer's expense obtain ☒ a title search and/or ☒ 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 November 30, 2020, 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 dredge material holding area / stormwater retention area 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. SELLER hereby acknowledges and covenants that SELLER is solely responsible for any and all commissions due arising out of or connected within the sale or transfer of the property. SELLER hereby indemnifies COUNTY and agrees to hold COUNTY free and harmless from and against any and all liability, loss, costs, damage and expense, including but not limited to attorney's fees and costs of litigation both prior to and on appeal, which COUNTY shall ever suffer or incur because of any claim by any agent, broker or finder engaged by SELLER, including broker, whether or not

meritorious, for any fee, commission or other compensation with respect 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. If the Phase I assessment reveals contamination this agreement may be terminated by BUYER and BUYER may decline to allow SELLER to clean up or to proceed to a Phase II assessment. Likewise, if the Phase II assessment reveals contamination objectionable to BUYER, BUYER may terminate this agreement. Alternatively, BUYER may grant SELLER an additional 90 days to clean up the site after the Phase II assessment, but BUYER is not required to do so. SELLER shall allow the BUYER or its agents reasonable right of entry upon the property for inspection purposes. Before the expiration of the initial 60-day inspection period or the additional 90-day extension for a Phase II assessment, BUYER shall have the right to terminate this agreement with a full refund of any deposits, should the results of the inspection indicate the property cannot be used for its intended purpose or that mitigation of conditions would be required. If clean up after a Phase II assessment is attempted but unacceptable to BUYER, the BUYER shall receive a full refund of its deposit.

Condemnation: This property ☐ is ☒ 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 Amendment 1

☐ NOT APPLICABLE

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

Lher Date 8/25/20
Bryan Andrew Lober, Chair

SELLER

Thomas J. Happel Date 7/23/2020
Thomas J. Happel, as Successor Trustee of
The Dolores J. Happel Revocable Living
Trust dated May 15, 2008

Agenda Item # J.1.

As approved by the Board 8/25/2020

ATTEST:

SCOTT ELLIS, CLERK

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 obligations 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 at 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:

ums (Assistant) County Attorney

VA Seller's Initial

AMENDMENT 1 TO CONTRACT FOR SALE AND PURCHASE

THIS AMENDMENT entered into this 23 day of July, 2020, by and between Brevard County, Florida, as Buyer and Thomas J. Happel, as Successor Trustee of the Dolores J. Happel Revocable Living Trust dated May 15, 2008 as Seller.

WHEREAS, the parties desire to amend the Contract for Sale and Purchase to read as follows:

Page One (1) **Warranties:** Paragraph b shall read in its entirety: SELLER warrants that it has no knowledge of hazardous waste or other environmental contamination located in or upon the property being acquired by the County.

Page One (1) **Warranties:** Paragraph d shall read in its entirety: Seller hereby represents and warrants to COUNTY that Seller has engaged or dealt with an agent, broker or finder, in regard to this Agreement or to the sale and purchase of the property contemplated hereby. SELLER hereby acknowledges and covenants that SELLER is solely responsible for any and all commissions due arising out of or connected within the sale or transfer of the property. SELLER hereby indemnifies COUNTY and agrees to hold COUNTY free and harmless from and against any and all liability, loss, costs, damage and expense, including but **not limited to attorney's** fees and costs of litigation both prior to and on appeal, which COUNTY shall ever suffer or incur because of any claim by any agent, broker or finder engaged by SELLER, including broker, whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement or to the sale and purchase of the property contemplated hereby.

Page Two (2) **Inspections:** This paragraph shall read in its entirety: 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 may 1) take all steps necessary to remove BUYER'S objections prior to the expiration of the 60-day inspection period, if possible or 2) Seller may elect to not take all necessary steps to remove BUYER'S objections and cancel or terminate the contract, 3) if acceptable to BUYER, SELLER shall allow an additional 90 days to provide adequate time to conduct a Phase II assessment meeting ASTM standards. If the Phase I assessment reveals contamination this agreement may be terminated by BUYER and BUYER may decline to allow SELLER to clean up or to proceed to a Phase II assessment. Likewise, if the Phase II assessment reveals contamination objectionable to BUYER, BUYER may terminate this agreement. Alternatively, BUYER may grant SELLER an additional 90 days to clean up the site after the Phase II assessment, but BUYER is not required to do so. If BUYER requests that SELLER clean up the site after a Phase II assessment, SELLER may take all steps necessary to remove BUYER'S objections, if possible, or SELLER may elect to not take all steps necessary to remove BUYER'S objections and cancel or terminate the Contract. SELLER shall allow the BUYER or its agents reasonable right of entry upon the property for inspection purposes. Before the expiration of the initial 60-day inspection period or the additional 90-day extension for a Phase

If assessment, BUYER shall have the right to terminate this agreement with a full refund of any deposits, should the results of the inspection indicate the property cannot be used for its intended purpose or that mitigation of conditions would be required. If clean up after a Phase II assessment is attempted but unacceptable to BUYER, the BUYER shall receive a full refund of its deposit.

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

All other terms and conditions of the Contract for Sale and Purchase dated July 23, 2020 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

Lber
Bryan Andrew Lober, Chair

ATTEST:

Scott Ellis
Scott Ellis, Clerk to the Board

Attorney

Board Meeting date: 8/25/20

Agenda Item # J.1.

Seller:

By:

Thomas J. Happel
Thomas J. Happel, Successors
Trustee of the Dolores J. Happel
Revocable Living Trust dated
May 15, 2008

Reviewed for legal form and content:

C. Schwerek Ass't County

EXHIBIT A

A parcel of land lying in Section 1, Township 26 South, Range 36 East, Brevard County Florida being more particularly described as follows:

Commence at the Southwest corner of Government Lot 2, of said Section 1, and run S. 89°58'41" E., along the South line of said Government Lot 2, a distance of 608.43 feet to an intersection with the Easterly right-of-way line of U.S. Highway No. 1, said intersection being the Point of Beginning; thence run N.29°04'41" W., along said Easterly right-of-way line of U.S. Highway No. 1, a distance of 228.89 feet; thence S.89°58'41" E., parallel with the aforementioned South line of Government Lot 2, a distance of 184.27 feet; thence S.00°01'19" W., a distance of 200.00 feet to a Point on the aforementioned South line of Government Lot 2; thence N.89°58'41" W., along said South line of Government Lot 2, 72.95 feet to the Point of Beginning. Containing 0.59 acres, more or less, and being subject to a 25.00 foot easement across the South 25.00 feet of the above described parcel, including all riparian rights appertaining thereto.

Happel property with FDOT discharge through wetland into an Indian River Lagoon canal.





Ruby Street Parcel

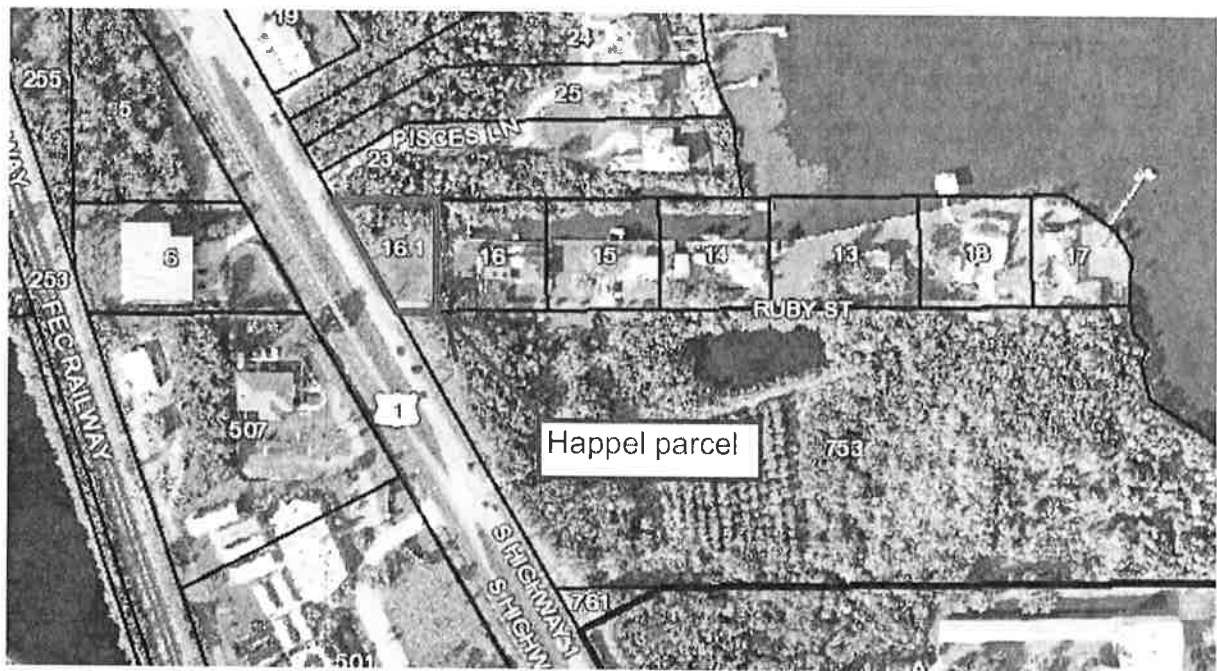
- EndStructure
- Inlet
- Culvert

LOCATION MAP

Section 01, Township 26 South, Range 36 East - District 4

PROPERTY LOCATION: East side of US Highway 1 in Rockledge

OWNERS NAME: Thomas J. Happel, Trustee



PROPERTY FACT SHEET

PROJECT: Basin 2420 Stormwater Drainage Improvement - Ruby Avenue

OWNER: Thomas J. Happel, as Successor Trustee

PARCEL LOCATION: Not Assigned

PARCEL SIZE: 0.52

ZONING/LANDUSE: 1000, Vacant Commercial Land

IMPROVEMENTS: None

TOPOGRAPHY: Generally, level

FLOOD ZONE: X and AE, areas of moderate or minimal flood risk

TAX PARCEL ID#: 26-36-01-00-16.1

ASSESSED VALUE: \$57,970.00 (2019 Assessment - Property Appraiser Records)

PUBLIC UTILITIES: Utilities available

PROPERTY TRANSACTION: Date: 02/28/1987

(Clerk of the Court Records) Sale amount: \$67,000.00

Date: 01/30/2009 Trustee's Deed

(Clerk of the Court Records) Sale amount: \$0.00

W.H. Benson & Company Appraisal Date: April 3, 2020

Appraisal Amount: \$130,000.00