



BOARD OF COUNTY COMMISSIONERS

POLICY

Number: BCC - 24
Cancels: 07/09/2013
Approved: 09/17/2024
Originator: Public Works Department
Review: 09/17/2027

TITLE: ACQUISITION, SALE, LEASE, EXCHANGE, DEDICATION AND DONATION OF REAL PROPERTY

~~NUMBER: BCC-~~

~~24 CANCELS:~~

~~_____ 12/01~~

~~/2009~~

~~APPROVED:~~

~~07/09/2013~~

~~ORIGINATOR: Public~~

~~Works Department~~

~~REVIEW: 07/09/2016~~

~~I. OBJECTIVE~~

I. Objective

To specify Board directive for Acquisition, Sale, Lease, Exchange, Dedication and Donation of Real Property for public purpose.

~~II. REFERENCES AND DEFINITIONS~~

II. Board Directives

A. General

~~A. The):- Board of County Commissioners of Brevard County, Florida.~~

~~B. Chapter 73 & 74, Florida Statutes: Eminent Domain and~~

~~procedures supplemental to Eminent Domain.~~

~~C. **Section 98-38, Brevard County Code**~~

~~D. **Housing and Urban Development Handbook (HUD):**~~

~~Includes criteria that must be followed when real property acquisition involves HUD funding.~~

- ~~1. **Land Acquisition Representative:** The person(s) Manager, or designee, is authorized to act on behalf of the Board, responsible for obtaining or disposing of all real property through negotiating a settlement, sale, lease, accept delivery of, approve, and cause the recording of any deed, dedication, acquisition, exchange, dedication, grant of easement, or donation procurement of the property once an agreement has been achieved, and coordinating the scheduled closing requirements with the appropriate departments and/or agencies, and if necessary, assist the County Attorney's Office with eminent domain proceedings. Board approval is required if the Land Acquisition office is not the land acquisition representative. other instrument conveying to the County an interest in real property related to any of the following:~~
 - ~~a. Approved Capital Improvements Plan (CIP) Projects.~~
 - ~~b. Projects that are currently within the approved budget.~~
 - ~~c. Any project or acquisition specifically approved by the Board.~~
 - ~~d. Routine activities which are undertaken by staff (e.g., ditch cleaning, culvert repairs, underground utility repair, etc.) that from time to time require unexpected temporary acquisition may be pursued by Staff. In the event such an acquisition and incurred expenditures of County funds are within the purchase authority limits for the County Manager level and below, then the transaction need not be reported to the Board, as described herein.~~
 - ~~e. Compliance with a condition or conditions volunteered by or imposed by an applicant in accordance with County ordinances or regulations, including, but not limited to, site plans or subdivision plans, or other regulatory approval granted by formal action of the Board.~~
- ~~2. **Routine Actions - All interests in real property conveyed to the County that do not fall into the categories listed in Section II.A.1. above shall be placed on the Board agenda for review and approval. Land conveyances of \$200,000 or more shall be placed on the Board agenda as New Business or Unfinished Business. Land conveyances of less than \$200,000 shall be placed on the Consent Agenda.**~~
- ~~3. **Emergency Actions**~~
 - ~~a. In the event of a declared emergency or other urgent need (e.g.~~

storm preparation and clean-up, on-going construction activities, etc.) that requires acquisition of property rights, the County Manager may authorize staff to proceed to acquire those rights necessary to protect the public health, safety and welfare.

- b. Transactions under \$200,000 shall be reported by agenda report to the Board within thirty (30) days or as soon thereafter as may be practical. Those actions \$200,000 or above will be reported to the Board at a regularly scheduled Board meeting for after-the-fact ratification.

4. Appraisers and Appraisals

- a. At least one appraisal shall be prepared by an appraiser under direct contract with the Board. However, in the case of advanced acquisition as defined in AO-37, the parcel owner may instead provide an appraisal for County use provided the appraisal is prepared by an MAI-designated appraiser if the appraiser executes a statement that no conflicts of interest exist and a disclosure statement on past associations with the property owner(s).
- b. Pursuant to Section 125.35, Florida Statutes, if the Brevard County Property Appraiser identifies the assessed value of a property to be less than \$15,000.00, then the Property Appraiser's value can be provided in lieu of an appraisal to the Board.
- c. Consistent with State policy, the Environmentally Endangered Lands program shall select appraisers from a list of Qualified Appraisers provided by the Division of Lands.

5. Closings and Title Defects

- a. On behalf of the County, the County Attorney, or designee, shall be responsible for reviewing and approving all closing documents related to contracts approved by the Board. The Chair or the Vice-Chair, as appropriate, will execute the deed, or other document to be recorded in the public record, and the County Manager, or designee, is hereby authorized to execute all remaining closing documents. The Land Acquisition representative shall attend the closing with the County Attorney's Office, except for a mail-away closing.

The County Attorney shall be responsible for objecting to all defects that are material to or affect the title of the property being acquired.

- E. **Murphy Act:** An act, which permitted states to reserve lands for future roadway use.

- F. _____

~~Real Property includes but is not limited to: fee simple ownership, a life estate, rights to use land under a lease, easements and other partial interests, and is more specifically defined in Black's Law Dictionary.~~

~~G. **Section 336.467, Florida Statutes:** County Commissioners (the Board), Powers of Eminent Domain, Purchase Agreements, Purchase Contracts, and Payments.~~

~~H. **Eminent Domain:** Pursuant to Chapters 73 and 74, Florida Statutes, a governmental right to acquire private property for public use by condemnation and the payment of just compensation.~~

~~I. **Negotiations:** The process by which property is sought to be acquired by voluntary transfer for public purposes through discussion, conference and final agreement. Begins with initial contact, first communication (be it e-mail, mail, phone or personal contact) and ends with settlement or filing of condemnation.~~

~~J. **Option Contract:** A proposed agreement by the county to purchase a piece of property, subject to the approval of the local governing body at a public meeting after thirty (30) days public notice.~~

~~III. **DIRECTIVES**~~

~~b. _____ The user department/office director may waive the defects and proceed to closing without additional Board approval if such defects do not affect the intended use(s) of the land and the value is not diminished by more than 10% or \$10,000 (whichever is less).~~

B. **Acquisition and/ or Exchange** - ~~The Board will authorize agencies to proceed with the acquisition~~ County staff is authorized to pursue preliminary investigations and negotiations for the acquisition and/or exchange of any property deemed necessary for public projects. Acquisition of property deemed necessary for public projects shall be pursued expeditiously to minimize the potential for increased costs in times of rising real estate markets. In the event that time is of the essence, the County Manager may authorize staff to proceed with negotiations. ~~Staff is authorized to proceed with preliminary investigations prior to obtaining Board authorization.~~ The final contract or acceptance of an acquisition or exchange shall require Board approval, unless covered under Section II.A.1. above.

~~A. **Beneficial Interest Statement** - Pursuant to Section 286.23, Florida Statutes, any person or entity holding real property in the form of a partnership, limited partnership, corporation, trust, or any form of representative capacity whatsoever for~~

~~others, except as exempted by law, shall, complete and submit a Beneficial Interest Statement along with the contract whereby such real property held in representative capacity is sold, leased, taken by eminent domain, or otherwise conveyed to the state or any local governmental unit, or an agency of either, and make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state his or her name and address and the name and address of every person having a beneficial interest in the real property, however small or minimal. This written disclosure shall be made to the chief officer, or to his or her officially designated representative, of the state, local governmental unit, or agency of either, with which the transaction is made at least 10 days prior to the time of closing or, in the case of an eminent domain taking, within 48 hours after the time when the required sum is deposited in the registry of the court. Notice of the deposit shall be made to the person or entity by registered or certified mail before the 48-hour period begins. Beneficial Interest Statements are not required for dedications or donations of real property or easements for public purposes.~~

C. — **Dedication** - If a proposed private activity ~~is dictated by the Brevard County Code~~ (e.g., site plan, subdivision plans, etc.) ~~requires~~ requiring easements, fee simple, or right-of-way dedications in favor of the County, staff may negotiate ~~with the property owner and complete an investigation of the property to be dedicated. If no objections are found and the dedication(s) comply with requirements of the Brevard County Code, then the County Manager, or designee, shall be authorized to approve and accept such dedication(s) on behalf of the County. If the County Manager, or designee, has concerns with or objections to said dedication(s), then the item shall be brought before the Board at a regularly scheduled meeting as New Business or Unfinished Business for review and approval or denial by the Board.~~

D. **Donation**

1. ~~Staff is authorized to receive, negotiate, conclude an investigation, and present the acquisition to the Board for any private real property donation to the County. The final acceptance of a donation shall require Board approval, unless covered under Sections II.A.1. and II.C. above.~~
- 1.2. ~~In the event of a proposed real property donation not covered under Section II.A.1. and II.C. above to the County, staff may negotiate, conclude an investigation, and present the acquisition to the Board at a regularly scheduled meeting for approval and acceptance without prior Board approval.~~

C.A. **Donation**

- ~~1. In the event of a proposed real property donation to the~~

~~County, staff may negotiate, conclude an investigation and present the acquisition to the Board at a~~

~~regularly scheduled meeting for approval and acceptance without prior Board approval. Easements and right of ways that have not been acquired by dedication or by the purchasing process must be presented to the Board for consideration for approval and acceptance of the donation. The agenda report should include (if applicable) an opinion of title or title search, mortgage joinder, legal description and sketch and a Phase 1 Environmental report or a reliance letter from an existing report preparer.~~

~~2. The County Manager or his designee is authorized to accept delivery of and cause the recording of any deed, grant of easement or other instrument conveying an interest in real property for any acquisition of property related to:~~

- ~~a. approved CIP Projects;~~
- ~~b. projects that are currently within the approved budget;~~
- ~~c. any project or acquisition specifically approved by the Board of County Commissioners; or~~
- ~~d. compliance with a condition or conditions volunteered by or imposed upon an applicant incident to a regulatory approval granted by formal action of the County Commission.~~

~~An agenda item requesting the Board to delegate the County Manager or his designee the authority to accept delivery of an instrument of conveyance for any interest in real property related to a project or application will be presented on the Consent Agenda for each Project or application to ensure that the Board is aware of the construction plans or interests in real property that are expected to be delivered to the County for that Project or application.~~

~~B. The Land Acquisition office will be utilized for all acquisitions of real property unless otherwise authorized by the Board.~~

~~C. The agency acquiring, selling or trading property is authorized to secure appraisals, environmental audits, surveys, title searches, title commitments, title insurance and/or policies in addition to other information necessary to establish the usefulness of the property for the purposes intended. The land acquisition representative shall determine or obtain information to determine ownership of the property.~~

~~D. Property shall be purchased directly from the property owner.~~

~~Negotiations shall not be conducted with persons holding contract to purchase or contract for sale on the subject property. This does not preclude staff from negotiating with authorized representatives of the owner. The Board, in a public meeting, may authorize any variances from this directive.~~

~~E. — All efforts will be made to work with those property owners who wish to convey real property at or below appraised value. In the event that a property owner requests more than appraised value of the property or requests services or materials (the value of which exceeds the appraised value) in lieu of payment for the real property, the land acquisition representative may recommend a course of action to the appropriate authority. The estimate of value of the property to the County will be determined by analysis of the benefits and balanced with the need for the acquisition.~~

~~F. — Appraisers and Appraisals — With the exception of lands being purchased with the intent of State ownership, at least one Appraisal utilized by the Board shall be prepared by an appraiser under direct contract to the Board. Consistent with State policy, the Environmentally Endangered Lands program shall select Appraisers from a list of Qualified Appraisers provided by the Division of Lands. Appraisers shall be required to provide a statement of non-conflict of interest and a disclosure statement on past associations with property owners.~~

D.E. — Parcel Information - The Property history, including taxable value, owner's name and date of acquisition, and date of real estate listing (if applicable) for properties to be acquired shall be included within the agenda report information provided to the Board.

E.F. — Condemnation Action - The Board must provide authorization to file an Eminent Domain lawsuit, and approve a "Resolution of Necessity" for condemnation action.

~~G. — All land acquisitions of \$100,000 or more shall be placed on the Board agenda as New Business or Unfinished Business. Donations, dedications and items less than \$100,000 may be placed on the Consent agenda.~~

~~H. — Emergency Acquisitions — In the event of a declared emergency or other urgent need (e.g., storm preparation and clean-up, on-going construction activities) which require acquisition of property rights, the County Manager may authorize staff to proceed to acquire those rights necessary to protect public health, safety and welfare. In the event such measures are deemed in order, the transaction shall be~~

~~reported to the Board within thirty (30) days or as soon thereafter as may be practical. The cost limit to this authority shall not exceed such limits as are normally established for the County Manager. In the event the acquisition is temporary and incurred expenditures of County funds are within the limits under the approved Department Directors level then the transaction need not be reported to the Board, as described herein.~~

~~I. **CIP Improvements** - Projects on the approved and funded Capital Improvements Plan (CIP) are considered authorized for negotiation by acquisition staff. Routine activities which are undertaken by staff (e.g., ditch cleaning, culvert repairs, underground utility repair, etc.) that from time to time require unexpected acquisition may be pursued by staff. In the event the acquisition is temporary and incurred expenditures of County funds are within the limits under the approved Department Directors level then the transaction need not be reported to the Board, as described herein.~~

~~J. **Title Defects** - The County Attorney shall be responsible for objecting to all defects that are material to or affect the title of the property being acquired. The land acquisition representative shall coordinate the removal of such encroachments, whether through corrective action of the property owner, through additional information provided by or to the title company, or through the processing of an agenda item where the Board is requested to accept the significant encroachment or defect. The User Agency, after being advised by the County Attorney will determine if the defect is significant and whether it will affect the intended use or value of the land. Consideration will be given to the time frames defined in the contract. In cases where the defect(s) do not affect the intended use of the land and the value is not diminished by more than 10% or \$10,000 (whichever is less) then the user agency may waive the defects and proceed to closing without Board approval.~~

F.G. **Maintenance Map Recording** -- The Land Acquisition ~~Department will~~ Office shall oversee the administrative processing and proper recording of the maintenance map document in association with the County Survey Office.

~~IV. **RESERVATION OF AUTHORITY**~~

