

MEMORANDUM  
from the  
TRANSPORTATION DIVISION

*Operations Section*

DATE: March 18, 1998

To: Commissioner Ray Judah  
Commission District 3

FROM: Paul W. Wingard, PE *PWH*  
Operations Director  
OM-29-98

Re: Response to Albert Blunt  
Drainage Canal Adjacent to Parker Lakes & Brandywine

Attached is a response prepared for your signature to Mr. Albert Blunt. He requested information on the ownership and maintenance responsibilities of the drainage ditch located between Parker Lakes and Brandywine.

If there are any questions or you need additional information, please advise.

PWW/jlc

Attachment

CC: Don Stilwell, County Manager  
J.W. French, Public Works Director  
Scott Gilbertson, Transportation Director  
H.B. Kirkland, Superintendent  
File

file H/PWW/M~RJ~Bry

RECEIVED  
MAR 26 1998



P.O. Box 398  
Fort Myers, Florida 33902-0398  
(941) 335-2111

335-2223

*Writer's Direct Dial Number*

**BOARD OF COUNTY COMMISSIONERS**

John E. Manning  
*District One*

March 18, 1998  
OL-33-98

Douglas R. St. Cerny  
*District Two*

Ray Judah  
*District Three*

Albert C. Blunt, CMSA, AMS  
Brandywine Condominium Association, Inc.  
C/O Benson's, Inc. AAMC  
1398 S. Brandywine Circle  
Fort Myers, Fl. 33919

Andrew W. Coy  
*District Four*

John E. Albion  
*District Five*

Donald D. Stilwell  
*County Manager*

Re: Brandywine Condominium Association  
Ownership of Drainage Ditch Adjacent to Brandywine

James G. Yaeger  
*County Attorney*

Dear Mr. Blunt:

Diana M. Parker  
*County Hearing Examiner*

This is in response to your March 6 letter regarding the ownership of and maintenance responsibilities for the drainage ditch located between the Brandywine Condominium Association property and the Parker Lakes subdivision.

The property where the drainage ditch is located is owned by the Parker Lakes Home Owners Association. The property has always been privately owned and has been under the control of Parker Lakes since the early 1980's. Since it is privately owned, the County can not access this property nor can we expend tax payers dollars to provide maintenance of this property.

The County Operation's staff has, in the past, completed maintenance work in this area. However, this work was done in error. We have researched the ownership and positively identified the property ownership and maintenance responsibilities to be Parker Lakes and not Lee County.

If you have any questions or need additional information, please advise.

Sincerely,

Commissioner Ray Judah  
District # 3 Commissioner

RJ/PWW/jjc

cc: Scott Gilbertson, Transportation Director  
File

**From:** JERRY CLINE  
**To:** Paul Wingard  
**Date:** 3/11/98 2:36pm  
**Caller:** John Koch

Telephoned  
 Will call again  
 Wants to see you  
 Urgent

Please call  
 Returned your call  
 Came to see you

Here goes on what he said: :-)

RE: Winkler/Gladiolus ditch:

The county maintains the north/south part. On the east/west part, to the west of the north/south part, the county DOES NOT maintain.

On the east/west part on the east side, the county maintains this.

A big part of the north/south part is of the IDD canal system.

OK?

*Brandywine Condominium Association, Inc.*

C/O Benson's, Inc. AAMC®  
Accredited and Certified Community Association Managers  
1398 S. Brandywine Circle, Ft. Myers, Florida 33919  
(941)481-2326 FAX: (941)481-0744

DOT OPERATIONS

MAR 10 1998

ADMIN.

Board of Directors  
John L. Callahan, President  
Ruth S. Adelson, Vice President  
Jacqueline O. Feldmann, Secretary  
William Haesche, Treasurer  
Lois T. Bowles, Director  
Joseph C. O'Meara, Director  
Carl R. Queck, Director

RECEIVED  
MAR 09 1998

March 6, 1998

COMMISSIONER  
RAY JUDAH

Commissioner Ray Judah  
PO Box 398  
Ft. Myers, FL 33902

Dear Commissioner Judah,

Ours is a 351 Unit Association North of Gladiolus and West of Winkler Road in South Fort Myers. We have a drainage canal problem that badly needs some attention prior to the onset of the rainy season.

According to our information the IDD drainage ditch that runs along the entire southern boundary of Brandywine was abandoned in favor of Parker Lakes, our neighbor on the south and part of the west boundary. Up until last summer, the Lee County Department of Transportation kept the canal and adjoining banks free of vegetation. When the DOT was contacted last year we were told that Parker Lakes was now responsible for the maintenance.

Can you please inform us as to how DOT can shift this responsibility to Parker Lakes and leave us with no means of protecting our property from flooding because of lack of maintenance to the drainage ditch?

The problem of overgrowth was further exacerbated several months ago when FPL had their tree contractor, Asplundh, clear the area of trees where they interfered with power lines. The trees were felled in place, and in many cases the broad tree canopy ended up in the middle of the drainage ditch, further impeding flow of water. This was brought to FPL's attention several times, and nothing was done to correct the problem.

We are most concerned that going into the rainy season, we will have serious flooding situations arise.

PAUL - please prepare response for COMM. JUDAH  
XC. SCOTT Wilkinson  
3/10/98  
Thank you Martha

BWCA/Judah  
March 6, 1998  
Page 2

Enclosed are several pictures of the problem. The first few were taken the last time the DOT maintained the canal, and the rest of the pictures were taken in the last week. It's hard to tell there is even a drainage ditch there now.

We regret having to address your office with this concern but we hope you will be in a position to have this problem attended to. If you or anybody on your staff has any questions, please let us know. We appreciate any assistance you can render.

Very truly yours,

A handwritten signature in black ink, appearing to read "Albert Blunt". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Albert C. Blunt, CMCA, AMS®  
Community Association Manager

CC: Lee County Department of Transportation - Mr. Scott Gilbertson  
Florida Power & Light - Manager, Line Clearance  
South Florida Water Management District - Mr. Chip Merriam

137-11-115

REC-1475 10 5:5

RECIPROCAL GRANT OF EASEMENTS

THIS AGREEMENT made and entered into this 13<sup>th</sup> day of August, 1980, by and between L & M DEVELOPMENT CORP., a Florida corporation, THORMAT S.A., a Panamanian corporation, and WERNER J. PREUSS and CHARLES S. WAUGH, Trustees.

W I T N E S S E T H:

WHEREAS, THORMAT S.A., a Panamanian corporation, is the fee simple owner of that certain real property located in Lee County, Florida, and legally described as the East 1/2 (E 1/2) of the Southeast 1/4 (SE 1/4) of Section 28, Township 45 South, Range 24 East, Lee County, Florida, and

WHEREAS, WERNER J. PREUSS and CHARLES S. WAUGH, Trustees, are the fee simple owners of that certain real property located in Lee County, Florida, and legally described as the West 1/2 (W 1/2) of Southeast 1/4 (SE 1/4) of Section 28, Township 45 South, Range 24 East, Lee County, Florida, and

WHEREAS, L & M DEVELOPMENT CORP., a Florida corporation is the fee simple owner of that certain real property in Lee County, Florida, that is contiguous to and which lies immediately to the North of the above-described two parcels and

WHEREAS, it has been agreed between the parties hereto that it would be to their mutual benefit if THORMAT S.A., a Panamanian corporation and WERNER J. PREUSS and CHARLES S. WAUGH, as Trustees, granted to L & M DEVELOPMENT CORP., an easement over and across their following-described property for drainage purposes and if L & M DEVELOPMENT CORP. reciprocated by granting to THORMAT S.A., a Panamanian corporation and WERNER J. PREUSS and CHARLES S. WAUGH, Trustees, an easement over and across its following-described property for the purpose of enabling the aforesaid owners to tie into or otherwise utilize the electric transmission poles and lines that are now located thereon or which may hereafter be constructed on said property. \*\*

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable considerations, the parties agree as follows:

1. That THORMAT S.A., a Panamanian corporation, and WERNER J. PREUSS and CHARLES S. WAUGH, individually and as Trustees, do hereby grant, bargain, sell and convey to L & M DEVELOPMENT CORP., its successors and assigns, forever

\*\* L & M DEVELOPMENT CORP. will furnish an engineers certificate that will show said drainage easement will be sufficient for both properties to use for drainage. L & M DEVELOPMENT CORP. shall be responsible for all permits and approvals.

RECORD VERIFIED - SAL GERAG...  
BY T. J. EVANS, JR.

ALICE DEBEE  
& ROSA  
ATTORNEYS AT LAW  
TAMPA, FLORIDA

an easement over and across that certain real property described as:

The Northerly thirty-five (35.00) feet of the Southeast one-quarter (SE 1/4) of Section 28, Township 45 South, Range 24 East, Lee County, Florida,

for water drainage purposes, so as to enable L & M DEVELOPMENT CORP., its successor and assigns to have free liberty of water course and drainage in, over and through said property from all of the contiguous and adjoining property of the aforesaid L & M DEVELOPMENT CORP.

2. The parties hereto acknowledge that there presently exists on the real property described in paragraph 1., a drainage canal. In consideration of this grant of easement to it, L & M DEVELOPMENT CORP., does hereby agree to cause said existing canal to be widened and deepened and otherwise reconstructed so as to become adequate in size and dimension to carry off the water from its land and the lands of the grantors of this easement, as all of said real property now exists. The work to be performed in this regard shall be at the sole cost and expense of L & M DEVELOPMENT CORP.

3. It is understood and agreed that L & M DEVELOPMENT CORP., its successors and assigns, shall in no way be bound in the future to improve, maintain, repair or re-construct the aforesaid drainage canal after it has undertaken and completed the above-stated revamping work; nor does L & M DEVELOPMENT CORP., its successors and assigns assume any liability or responsibility to the grantors of this easement, their heirs, successors and assigns, or any person using the land by invitation, license, or by reason of any business conducted with grantors, their heirs, successors and assigns.

4. L & M DEVELOPMENT CORP. does hereby grant, bargain, sell and convey to THORMAT S.A., a Panamanian corporation, its successors and assigns, and to WERNER J. PREUSS and CHARLES S. WAUGH, as Trustees, their successors and assigns, an easement over and across that certain real property owned by it and described as:

The Southerly twenty (20.00) feet of the Northeast one-quarter (NE 1/4) of Section 28, Township 45 South, Range 24 East, Lee County, Florida,

for the purpose of giving them access to hook-up to and otherwise utilize the present and any future electric transmission poles and lines located on or to be located on said real property, which Florida Power and Light Company, or its successor may deem necessary and proper in providing adequate electric service to the property of the grantees of this grant.

5. The grantees of this grant shall have free right and liberty to cause the construction, reconstruction, replacement, removal and use of such wires and cables to be suspended over the real property described in paragraph 4., as may be necessary for the transmission of electric energy to their property, conditioned upon said use being reasonable and necessary and not in violation of any law or policy governing the transmission of electric energy.

6. It is understood and agreed that the easements granted by each of the parties to the other is given upon the express understanding and condition that the servient tenement may likewise be used by the respective grantor of said easement, its successors and assigns, in conjunction with the use of the respective grantee of said easement, its successors and assigns.

7. The grant of easements herein shall run with the land and shall be binding upon and shall inure to the benefit of the parties, their heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

[Signature]  
Witness

[Signature]  
Witness

[Signature]  
Witness

[Signature]  
Witness

[Signature]  
Witness as to "Preuss"

[Signature]  
Witness as to "Preuss"

[Signature]  
Witness as to "Vaugh"

[Signature]  
Witness as to "Vaugh"

L & M DEVELOPMENT CORP.,  
a Florida corporation  
7050 Winkler Road, Box 101  
Fort Myers, Florida 33907

By: [Signature] (SEAL)  
Guy Memoiti, President

THORMAT S.A., a Panamanian corporation  
c/o Charles S. Vaugh  
P.O. Box 1587  
Fort Myers, Florida 33902

By: [Signature] (SEAL)  
Juan Carlos Garcia Badaracco, Its  
Attorney-in-fact pursuant to Power of  
Attorney recorded in O.R. Book 1345,  
pages 2071-2080, Public Records of Lee  
Lee County, Florida.

[Signature] (SEAL)  
Werner J. Preuss, Individually & Trustee  
P.O. Box 1587  
Fort Myers, Florida 33902

[Signature] (SEAL)  
Charles S. Vaugh, Individually & Trustee  
P.O. Box 1587  
Fort Myers, Florida 33902

ALPHA, BETA, GAMMA  
& DELTA  
A Partnership of Florida  
Attorneys & Accountants at Law  
FORT MYERS, FLORIDA

Acknowledgments attached.



moved to approve the revisions to Daniels Road Plans which call for the construction of 2 lanes of roadway, clearing and filling for those 2 lanes, building water structures, establishing a schedule for handling the water, some fencing to channel wildlife and a selective cutting of trees on the right-of-way only, necessary for the Department of Environmental Regulation Permit, seconded by Commissioner Taylor, called and carried. Commissioner Evans voted Aye but requested the record to show that she does not like it.

The Director of the Division of Transportation requested approval for a change order in connection with Daniels Road and Six Mile Parkway Bridges over Ten Mile Canal for additional piling. Commissioner Roberts moved to approve the following Change Order No. 1 in connection with Daniels Road and Six Mile Parkway Bridge over Ten Mile Canal, to Zep Construction, in the amount of \$2,640.00, for additional linear feet of piling, seconded by Commissioner Steele, called and carried.

FOR PHOTO COPY OF CHANGE ORDER SEE PAGE 134-A

The Biological Assessment from the State of Florida Department of Environmental Regulation concerning the application of Mr. Paul Schultz, File No. 36-39-1215-5E (7153), Lee County, regarding improvements to the shoreline of the Caloosahatchee River, Lot 3, Sec. 19, Twp. 45, Rge. 24, along Palmetto Point, was presented by the Director of the Division of Transportation. Chairman Whan moved to adopt the following Resolution approving the biological assessment of the Department of Environmental Regulation, seconded by Commissioner Taylor, called and carried.

FOR PHOTO COPY OF RESOLUTION INCLUDING BIOLOGICAL ASSESSMENT SEE PAGES 134-B thru 134-J

Mr. Benjamin Pratt, Director of the Division of Transportation, presented a plat of Cypress Village No. 3 for approval by the Board, subject to the escrow funds. Chairman Whan moved to accept the plat of Cypress Village No. 3 for recording subject to escrow funds, in the amount of \$110,644.29, seconded by Commissioner Steele, called and carried.

Commissioner Taylor moved to receive the following easements, seconded by Commissioner Steele, called and carried.

- a) Deed of Easement for drainage and utility purposes located in Sec. 34, Twp. 45S, Rge. 24E, from Povia-Ballantine Corporation.
- b) Easement for drainage and utility purposes, located in Sec's. 28 and 31, Twp. 45S, Rge. 24E, from Joseph Povia, Trustee.
- c) Perpetual Easement for road and buried utility easement located on Tract 39, Sabal Ridge unrecorded, in Sec. 23, Twp. 45S, Rge. 25E, from Harris & Johnnie Anderson.
- d) Utility Easement No. P-120, located on Lot 12, Block 16, City View Park No. 3, in connection with the East Lee County Sewer System, from Margaret S. Atkinson.

The Director of the Division of Transportation requested direction from the Board concerning a water line break in the park rest rooms along the Sanibel Causeway and the fact that the rest rooms have to be shut down while repairs are being made,

CHANGE  
ORDER

RESOL. &  
BIOLOGICAL  
ASSESSMENT

PLAT

EASEMENTS

REPAIR OF  
REST ROOMS  
SANIBEL  
CAUSEWAY

REC 1264 PD 2142

105546

THIS INSTRUMENT IS FILED IN  
BOOK 105546 PAGE 1  
COUNTY CLERK  
FORT MYERS, FLORIDA 33902

EASEMENT

For and in consideration of the sum of \$10.00 and other good and valuable consideration, JOSEPH POVIA, Trustee, does hereby grant unto Lee County, Florida, a political subdivision of the State of Florida, an easement for drainage and utility purposes over and across the following described lands in Lee County, Florida:

A tract or parcel of land lying in Sections 28 and 33, Township 45 South, Range 24 East, Lee County, Florida, which tract or parcel is described as follows:

The East fifty feet (50') of that part of Section 28, Township 45 South, Range 24 East, which is more than 444.91 feet south of the northern boundary of the South half (S $\frac{1}{2}$ ) of the Southeast quarter (SE $\frac{1}{4}$ ) of said Section 28; in addition thereto, the East fifty feet (50') of the North 113.65 feet of Section 33, Township 45 South, Range 24 East.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this 9th day of February, 1978.

John Mellor  
Abriana Elliott

Joseph Povia (Trustee)  
JOSEPH POVIA, Trustee

STATE OF FLORIDA

COUNTY OF LEE

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared JOSEPH POVIA, Trustee, to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 9th day of February, 1978.

DOCUMENTARY TAX STAMP TAX  
SUR TAX ENVE 1178  
00.30  
00.55  
FLORIDA  
DEPT. OF REVENUE  
APR 11 1978  
AP

RECORD VERIFIED - SAL GTRACI CLERK  
BY LINDA THOMPSON D.C.

106615

DEED OF EASEMENT

REC 1264 214

For and in consideration of the sum of \$10.00 and other good and valuable consideration, POVIA-BALLANTINE CORPORATION, a Florida corporation, does hereby grant unto LEE COUNTY, Florida, a political subdivision of the state of Florida, an easement for drainage and utility purposes over and across the following described lands in Lee County, Florida:

A tract of land lying in Section 34, Township 45 South, Range 24 East, Lee County, Florida, which tract is described as follows:

Beginning at the southwest corner of Cypress Village Unit 2 as recorded in Plat Book 30 at pages 111 and 112 of the Public Records of Lee County, run N 89°53'34" E along the southerly boundary of an easterly prolongation of said subdivision for 1276.61 feet to a point 150.0 feet from the westerly right of way line of Winkler Road; thence run S 00°07'24" E for 20.00 feet; thence run S 89°53'34" W for 1276.58 feet to the westerly line of said Section 34; thence run N 00°06'56" W along said section line for 20.00 feet to the point of beginning; and

the south 20 feet of Lots 1 through 6 of Block 7 Cypress Village Unit 2, a subdivision according to the plat thereof recorded in Plat Book 30 at pages 111 and 112 of the Public Records of Lee County, Florida.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this 22 day of March, 1978.

Witnesses:

Robert R. Matt  
Karen R. Matt

POVIA-BALLANTINE CORPORATION

By: Lawrence Povia  
Lawrence Povia, President

STATE OF FLORIDA

COUNTY OF LEE

I HEREBY CERTIFY that on this day before me, an officer

FLORIDA DOCUMENTARY SUR TAX 00.55 STAMP TAX 00.30  
APR 11 2 29 PM '78  
CLERK OF DISTRICT COURT  
OFFICE OF THE CLERK OF DISTRICT COURT  
LEE COUNTY, FLORIDA

RECORD VERIFIED - SAL GERACI, CLERK  
BY LINDA THOMPSON, O.C.