

2-7-02

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida

02 MAR -3 PM 1:10
ADMINISTRATIVE HEARINGS

JDR CWS

TOWN OF DAVIE,

Petitioner,

vs.

DOAH CASE NO.: 01-4263BID
DOT CASE NO.: 01-121

DEPARTMENT OF TRANSPORTATION,

Respondent,

and

KEVIN CARMICHAEL, TRUSTEE,

Intervenor.

_____ /

FINAL ORDER

This proceeding was initiated by the filing of a Notice of Protest on September 25, 2001, by **Petitioner, TOWN OF DAVIE** (hereinafter **DAVIE**), pursuant to Section 120.57(1), Florida Statutes, in response to the posting on September 20, 2001, of a Revised Bid Tabulation, by the **Petitioner, DEPARTMENT OF TRANSPORTATION** (hereinafter **DEPARTMENT**). On October 30, 2001, the matter was referred to the Division of Administrative Hearings (hereinafter **DOAH**) for assignment of an Administrative Law Judge and a formal hearing. On November 1, 2001, a Petition to Intervene was filed by **Intervenor, KEVIN CARMICHAEL, TRUSTEE** (hereinafter **CARMICHAEL**).

A formal administrative hearing was held by video teleconference in Tallahassee,

Florida, on November 29, 2001, before J. D. Parrish, a duly appointed Administrative Law Judge. Appearances on behalf of the parties were as follows:

For Petitioner: Michael T. Burke, Esquire
Johnson, Anselmo, Murdoch,
Burke & George, P.A.
790 East Broward Boulevard, Suite 400
Post Office Box 030220
Fort Lauderdale, Florida 33303-0220

For Respondent: Brian F. McGrail, Esquire
Assistant General Counsel
Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

For Intervenor: Joseph W. Lawrence, II, Esquire
Vezina, Lawrence & Piscitelli, P.A.
350 East Las Olas Boulevard, Suite 1130
Fort Lauderdale, Florida 33301

At the hearing the testimony of the following persons was presented: Jack R. Leonard, a contract attorney with the Florida Department of Transportation, Turnpike District; Robert Bush, a right of way manager for the Turnpike District; Adam Russell Stehly, a surplus property manager employed by Post, Buckley, Schuh & Jernigan, doing contract work for the Turnpike District; Brenda Ashe, a consultant employed by Post, Buckley, Schuh & Jernigan, doing work as a property management administrator for the Turnpike District; Thomas A. Anderson, the deputy right of way manager for the Turnpike District; and Thomas J. Willi, the town administrator for the Town of Davie. The parties offered Exhibits 23, 30, 36-A, 38, 41-43, 45, 47, 56-A, 58, 61, 65, 67, and 73, which were admitted into evidence. Official recognition was taken of all relevant statutes and rules. The transcript of the hearing was filed December 17, 2001. On January 7, 2002, the DEPARTMENT and DAVIE filed their

respective Proposed Recommended Orders. On February 7, 2002, Judge Parrish issued her Recommended Order. On February 18, 2002, DAVIE filed its exceptions to the Recommended Order, and the DEPARTMENT filed its responses to DAVIE'S exceptions on February 21, 2002.

STATEMENT OF THE ISSUE

As stated by the Administrative Law Judge in her Recommended Order, the issue presented was: "Whether the decision to award the bid for Parcel No. 93S101, State Road 84 Spur, was in accordance with the governing rules and statutes or was arbitrary, capricious, or contrary to competition."

BACKGROUND

On June 18, 2001, the DEPARTMENT issued an intent to award the bid for surplus property, known as the State Road 84 Spur or the Spur Parcel (consisting of two separately identified parcels, 101-A and 101-B), to CARMICHAEL. DAVIE notified the DEPARTMENT of its statutory right of refusal to the property, and the DEPARTMENT rejected all bids. The DEPARTMENT then offered DAVIE its right of refusal and DAVIE failed to respond. Thereafter, the DEPARTMENT posted a Revised Bid Tabulation on September 20, 2001, of its intent to award the property to CARMICHAEL. On September 25, 2001, DAVIE filed a Notice of Protest concerning the intended award. The matter was referred to DOAH on October 30, 2001, and was assigned to J. D. Parrish, Administrative Law Judge. The case was set for hearing and discovery ensued.

The formal administrative hearing was commenced on November 29, 2001, via video teleconference before Judge Parrish.

EXCEPTIONS TO RECOMMENDED ORDER

DAVIE'S first exception is to Finding of Fact No. 4, stating that neither in October 2000, nor at any time prior to the **DEPARTMENT'S** offering of the Spur Property to the public by competitive bid, did the **DEPARTMENT** offer to convey Parcel 101-B to **DAVIE** for no consideration or at the **DEPARTMENT'S** approved appraised value. Any factual finding that Parcel 101-B was offered to **DAVIE** prior to the public bid process or that either Parcel 101-A or 101-B was offered to **DAVIE** at the **DEPARTMENT'S** approved appraised value prior to the competitive bid process is not, according to **DAVIE**, supported by competent, substantial evidence as a departure from the essential requirements of law.

The **DEPARTMENT** acknowledges that only Parcel 101-A and not Parcel 101-B of the Spur Parcel was offered to **DAVIE** in the **DEPARTMENT'S** October 26, 2000, letter.

However, **DAVIE** fails to establish the lack of competent, substantial evidence that Parcel 101-A was offered to **DAVIE** at "no consideration" and, as found by the Administrative Law Judge, "For whatever reasons, the Petitioner did not accept the offer." (Finding of Fact No. 4) In analyzing **DAVIE'S** exception, it is specifically noted that Finding of Fact No. 4 makes no reference to or finding that in October 2000 the **DEPARTMENT** offered the Spur Parcel to **DAVIE** for the **DEPARTMENT'S** "approved appraised value." Similarly, the record support for this exception offered by **DAVIE** fails to address an offer of the Spur Parcel to **DAVIE** at the **DEPARTMENT'S** approved appraised value. While **DAVIE** has offered no competent, substantial evidence to refute the ultimate finding of fact that Parcel 101-A was offered to **DAVIE** for no consideration and **DAVIE** never acted on the offer, such evidence could not form the basis for the **DEPARTMENT'S** rejection of the Administrative Law

Judge's finding in this regard. The **DEPARTMENT** cannot properly revisit the Administrative Law Judge's weight and credibility determinations, and neither an agency nor a reviewing court has the authority to substitute its view of the evidence for that of the Administrative Law Judge. Boyd v. Department of Revenue, 682 So. 2d 1117, 1118 (Fla. 4th DCA 1996); Heifetz v. Department of Business Reg., 475 So. 2d 1277, 1281-1282 (Fla. 1st DCA 1985). Moreover, as modified to relate to Parcel 101-A, the findings to which **DAVIE** objects are supported by competent, substantial evidence.

DAVIE'S first exception is accepted in part and Finding of Fact No. 4 is modified to reflect that the **DEPARTMENT** offered Parcel 101-A to **DAVIE** for no consideration in October 2000. The remainder of **DAVIE'S** first exception is rejected.

DAVIE'S second exception is to Finding of Fact No. 9, claiming that the finding that **DAVIE** did not and does not intend to purchase the subject property is not supported by competent, substantial evidence and is a departure from the essential requirements of law. **DAVIE** argues that, as set forth in its Formal Protest and Request for Hearing, it be given the opportunity to purchase the property for the sum of \$463,000 in accordance with the updated appraisal submitted by Patricia S. Hayes on April 25, 2001, or, in the alternative, that the **DEPARTMENT** return to its original position of rejecting all bids because the sale of the subject property by competitive bid was prematurely conducted in violation of Section 337.25, Florida Statutes, and Rule 14-19.004, Florida Administrative Code, and that **DAVIE** be given an opportunity to get with other members of the public to bid on the property.

The record is replete with competent, substantial evidence that **DAVIE** never offered to

purchase the Spur Parcel nor did it intend to purchase the Spur Parcel as found by the Administrative Law Judge in Findings of Fact No. 7 and 9. In addition, these findings are also supported by Findings of Fact No. 18, 19, and 20, to which **DAVIE** has filed no exceptions. The challenged finding is amply supported by the record and a number of uncontested findings of fact and cannot, therefore, be set aside by the **DEPARTMENT**. Heifetz, 475 So. 2d at 1281-1282.

In Finding of Fact No. 9, the Administrative Law Judge states: "The only way the Intervenor seeks to acquire the property is without cost." It is clear that the word Intervenor is a scrivener's error, as it is undisputed in the record that the Intevenor, **CARMICHAEL**, was the successful bidder for the Spur Parcel, and that the Petitioner, **DAVIE**, is the only party that sought to acquire the property without cost.

DAVIE'S second exception is rejected. Based upon the noted scrivener's error, the second sentence of Finding of Fact No. 9 is amended to read: "The only way the Petitioner seeks to acquire the property is without cost."

DAVIE'S third exception is to Finding of Fact No. 15, which states, in part, that "the Department offered the property to the Town of Davie at the approved appraised value of \$1.9 million." **DAVIE** asserts that while it is accurate that after the **DEPARTMENT** received a high bid of \$966,000 for the subject property, the **DEPARTMENT** offered to sell the subject property to **DAVIE** for \$1,900,000, the offer was not based on "an approved appraised value" which complied with the rules, regulations, and procedures of the **DEPARTMENT**. **DAVIE** argues that the appraisal used by the **DEPARTMENT** in offering to convey the subject property to **DAVIE** had been superseded by a subsequent appraisal conducted by the same

appraiser and had a date evaluation of more than six (6) months prior to the offer and proposed and date of execution for the conveyance document in violation of Section 10.5.2.6 of the DEPARTMENT'S Right of Way Manual.

There is competent, substantial evidence in the record to support the finding that the DEPARTMENT offered DAVIE the Spur Parcel at the "Department's approved appraised value of \$1.9 million." In addition, DAVIE'S attempt to offer into evidence two DEPARTMENT appraisals and elicited testimony regarding them were rejected by the Administrative Law Judge as irrelevant to the DEPARTMENT'S actions at issue in this proceeding, which is whether the DEPARTMENT'S decision to award the Spur Parcel was done in accordance with the law. The Administrative Law Judge ruled that the value of the Spur Parcel was not at issue in this proceeding because value was not a specification of the bid/proposal package. It is within the province of the Administrative Law Judge to make weight and credibility determinations, determinations which the DEPARTMENT cannot revisit. Brown v. Criminal Justice Standards & Training Comm'n, 667 So. 2d 977, 979 (Fla. 4th DCA 1996); Heifetz, 475 So. 2d at 1281-1282.

DAVIE'S third exception is rejected.

DAVIE'S fourth exception is to Finding of Fact No. 16, because it omits substantial portions of DAVIE'S July 27, 2001, response to the DEPARTMENT'S letter, including DAVIE'S concern that its preferential rights of purchase were not being afforded by offering to sell property for \$1,900,000 which had generated a highest competitive bid of only \$966,000, questions concerning the validity of the appraisal used by the DEPARTMENT which, in fact, unbeknownst to DAVIE, had been superseded and the express desire that the

DEPARTMENT maintain its position of rejecting all bids and that **DAVIE** be given the opportunity to participate in a competitive bidding process.

It appears that by its exception, **DAVIE** requests that the **DEPARTMENT** make additional findings regarding the content of **DAVIE'S** July 27, 2001, letter to the **DEPARTMENT**, which was sent to the **DEPARTMENT** after the expiration of **DAVIE'S** time for response, stating that **DAVIE** would accept the Spur Parcel for a public purpose for no consideration. Such additional findings are not only unnecessary, but beyond the authority of the **DEPARTMENT** to make. Florida Power & Light Co., 693 So. 2d at 1026-1027

DAVIE'S fourth exception is rejected.

DAVIE'S fifth exception is to Conclusion of Law No. 23 that **DAVIE** failed to establish any violation of statute or rule in connection with the bid process and disposal of the surplus property. **DAVIE** asserts that the undisputed evidence established the following:

(a) The **DEPARTMENT** failed to comply with the requirements of Rule 14-19.004(1), Florida Administrative Code, and Section 10.5.1.10(A)-(B) of the **DEPARTMENT'S** Right of Way Manual, in that the subject property was not offered to **DAVIE** for sale at the **DEPARTMENT'S** approved appraised value prior to competitive sale of the property to the public; and

(b) The **DEPARTMENT** offered the property to the public knowing that **DAVIE** had an interest in acquiring the property and improperly advised **DAVIE** that its preferential rights of purchase would be addressed after the sealed bids were opened.

DAVIE'S exception to Conclusion of Law No. 23 merely reargues **DAVIE'S** interpretation of governing statutes and rule provisions. This conclusion is squarely grounded

in the competent, substantial evidence presented and the lack of any contrary evidence on the issue. In fact, **DAVIE** does not claim that the conclusion is not supported by competent, substantial evidence. The record is well established that in accordance with statute and its rules, the **DEPARTMENT** had not negotiated or sold the Spur Parcel on July 12, 2001, when **DAVIE** was offered its right of first refusal. As such, **DAVIE'S** claim that the Spur Parcel was not offered to **DAVIE** at the **DEPARTMENT'S** "approved appraised value prior to competitive sale of the property to the public" is clearly erroneous and devoid of any support in the record. Rule 14-19.004(1), Florida Administrative Code, provides that "In the event the Department is disposing of surplus property not governed by the exceptions in Section 337.25(4), Florida Statutes, the Department must first offer such property to the local government in the jurisdiction in which the parcel is situated, **prior to either the negotiation or competitive sale of the property.**" (emphasis supplied)

Neither the record nor the law supports a conclusion that the **DEPARTMENT** violated Section 337.25(4), Florida Statutes, Rule 14-19.004(1), Florida Administrative Code, or the **DEPARTMENT'S** own procedures in making its offer to **DAVIE**.

There is no evidence in this record, and **DAVIE** cites to none, to support a conclusion that the **DEPARTMENT** was advised that **DAVIE** was interested in acquiring the Spur Parcel between February 7, 2001, and May 30, 2001, when the **DEPARTMENT** advertised the Spur Parcel for competitive bid. In fact, the record and numerous findings of fact support a contrary conclusion and amply support Conclusion of Law No. 23. See Findings of Fact No. 5-16 and 18-20.

The findings and conclusions of the Administrative Law Judge in this regard are well

supported in the record and the law.

DAVIE'S fifth exception is rejected.

DAVIE'S sixth exception is to Conclusion of Law No. 24. By its exception **DAVIE** claims that the Administrative Law Judge's finding that **DAVIE** was afforded ample opportunity to purchase the subject property, has delayed the competitive bidding process without legal justification, and has failed to exercise its rights to acquire the property as provided by law is erroneous and constitutes a departure from the essential requirements of law for the following reasons:

(a) As set forth above, the **DEPARTMENT** violated its rules and policies by failing to offer **DAVIE** the opportunity to purchase the subject property at its approved appraised value prior to offering the property to the public by competitive bid.

(b) The **DEPARTMENT** cannot cure this violation by subsequently offering **DAVIE** the opportunity to purchase the property after the competitive bid process has been completed or, in the alternative, failed to do so by offering the property to **DAVIE** based on an appraisal which had been superceded by a later appraisal and an appraisal with a date of valuation more than six (6) months prior to the offer and proposed date of conveyance and which otherwise violated **DEPARTMENT** rules and policies.

(c) While **DAVIE** acknowledges that it does not have the right to acquire the subject property for no consideration, it does have the right to be offered the property for purchase prior to public offering of the property and has the right that the offer to purchase be in accordance with an approved appraisal which "purports" [sic] with **DEPARTMENT** rules and policies.

DAVIE'S exception seeks to have the DEPARTMENT make findings and draw conclusions that the DEPARTMENT violated the law and its own rules and procedures. As detailed above, DAVIE has made no showing that the Administrative Law Judge's findings of fact supporting the conclusion that the DEPARTMENT did not violate the law, and did not violate its rules or procedures are not supported by competent, substantial evidence; DAVIE has similarly failed to establish that any conclusions in that regard are erroneous as a matter of law.

To repeat, Rule 14-19.004(1), Florida Administrative Code, provides, in part, that "In the event the Department is disposing of surplus property not governed by the exceptions in Section 337.25(4), Florida Statutes, the Department must first offer such property to the local government in the jurisdiction in which the parcel is situated, prior to either the negotiation or competitive sale of the property." DAVIE continues to misinterpret this provision as requiring the DEPARTMENT to offer the property to DAVIE "prior to offering the property to the public by competitive bid." The DEPARTMENT is required to offer the property to DAVIE prior to negotiation or sale, not prior to advertising it for bids. The record is undisputed that the DEPARTMENT complied with this requirement when it advertised the Spur Parcel for competitive bid, rejected all bids, and gave DAVIE the opportunity to purchase the Spur Parcel for its approved appraisal value. The Administrative Law Judge also properly found and concluded that when DAVIE made no counter offer, but some time later again asked to be given the property for no cost, "Nothing in the law pertaining to the Petitioner's right of first refusal or the bid process entitled the Petitioner to acquire the subject property without consideration." (Conclusion of Law No. 24)

DAVIE has offered no legal argument or authority to establish that the procedure the **DEPARTMENT** followed or the Administrative Law Judge's conclusions related thereto are erroneous as a matter of law. In addition, there is nothing in the record or in **DAVIE'S** exceptions to establish that compliance with the law resulted in any prejudice to **DAVIE**. As noted above, contrary to **DAVIE'S** erroneous assertion otherwise, at the time the **DEPARTMENT** offered **DAVIE** its preferential statutory right of first refusal, the competitive bid process had not been completed. The evidence in this regard is unrefuted. As to **DAVIE'S** continued reference to appraisals that were not admitted into evidence, the **DEPARTMENT** cannot reject conclusions of law that are grounded in findings of fact that are supported by competent, substantial evidence or that are challenged on the basis of evidence that was never admitted into evidence.

The Administrative Law Judge's conclusion of law in this regard is well supported in the law and that the findings of fact supporting it are supported by competent, substantial evidence.

DAVIE'S sixth exception is rejected.

DAVIE'S seventh exception is to Conclusion of Law No. 26, alleging that no evidence in the record shows that **DAVIE** waived its preferential rights under Florida statutory law and the rules and policies of the **DEPARTMENT** to acquire the subject property prior to its being offered to the public by competitive bid at the **DEPARTMENT'S** valid approved appraised value.

The record establishes by competent, substantial evidence that **DAVIE** was not only afforded its preferential rights under the law, but that by its acts and failures to act **DAVIE**

demonstrated a waiver of any right it may have had to acquire the Spur Parcel. The law does not require that the property be offered to **DAVIE** “prior to its being offered to the public by competitive bid,” nor does the law require that if it would be used by **DAVIE** for a public purpose that the property be must be offered without consideration, the statute is permissive, not mandatory. See Rule 14-19.004(1), Fla. Admin Code; § 337.25(4), Fla. Stat.

DAVIE’S seventh exception is rejected.

DAVIE’S eighth exception is to Conclusion of Law No. 28, claiming that the **DEPARTMENT** “admittedly” failed to comply with Rule 14-19.004, Florida Administrative Code, and **DEPARTMENT** policies by not offering the subject property to **DAVIE** for purchase at the **DEPARTMENT’S** approved appraised value before offering the property to the public by competitive bid and failed to cure any such violation by later offering the subject property to **DAVIE** based on a valid approved appraisal.

DAVIE offers not a single citation to the record in support of its bold assertion that “The Respondent admittedly failed to comply with Rule 14-19.004, Florida Administrative Code, and Department policies by not offering the subject property to the Petitioner for purchase at the Department’s approved appraised value before offering the property to the public by competitive bid” In fact, a review of the record in its entirety reveals that this statement is a blatant misrepresentation of the evidentiary record in this proceeding. As noted in detail above, there is no requirement that the **DEPARTMENT** offer the Spur Parcel to **DAVIE** prior to it being offered to the public by competitive bid - it must be offered prior to negotiation or sale. Thus, the **DEPARTMENT’S** offer of the Spur Parcel to **DAVIE** prior to it being sold based upon the competitive bids received, was not an attempt to cure any such

violation, as suggested by **DAVIE** in its exception, it was simply done in compliance with the rule.

DAVIE'S eighth exception is rejected.

DAVIE'S ninth exception is to Conclusion of Law No. 29, and denies that **DAVIE** waived its right to challenge the bid process and disposal of the property in that:

(a) The record does not show that a bid package was provided to **DAVIE**;

(b) It was reasonable for **DAVIE** to rely upon the matter set forth in the

DEPARTMENT'S Assistant General Counsel's February 7, 2001, letter; and

(c) The **DEPARTMENT** recognized the invalidity of the bid process by initially rejecting all bids.

DAVIE misapprehends Conclusion of Law No. 29, as the Administrative Law Judge is referring therein to **DAVIE'S** waiver of its right to challenge the bid process, the terms of the proposed sale, or any specification of the process by timely filing a challenge within seventy-two (72) hours receipt of the bid package pursuant to Section 120.57(3)(b), Florida Statutes.

Section 120.57(3)(b), Florida Statutes states in pertinent part:

Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of agency decision or intended decision and shall file a formal written protest within 10 days after filing the notice of protest. **With respect to a protest of the specifications contained in an invitation to bid or in a request for proposals, the notice of protest shall be filed within 72 hours after receipt of notice of the project plans and specifications or intended project plans and specifications in an invitation to bid or a request for proposals, and the formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or**

failure to file a formal written protest **shall constitute a waiver of proceedings under this chapter.** (Emphasis supplied)

DAVIE did not file a timely notice of protest to challenge the bid process, the terms of the proposed sale, or any specification of the proposed process. The record reflects that no minimum bid or appraisal value was part of the bid proposal package. **DAVIE'S** failure to timely challenge the bid specifications supports the Administrative Law Judge's decision to reject **DAVIE'S** attempts to admit into evidence any documentary or testimonial evidence regarding the value of the Spur Parcel.

DAVIE erroneously states that the "record does not show that a bid package was provided" to **DAVIE**. **DAVIE** did receive a bid package, as admitted by **DAVIE'S** own witness:

Q: Isn't it a fact that the town in fact obtained a bid package prior to the bid's date for submittal?

A: Yes, trying to scramble to see - you know, to protect the town's interest. (T. 209)¹

Any claim that **DAVIE** may now raise regarding the **DEPARTMENT'S** bid process, the specifications of the bid, or the terms of the proposed sale have been waived by **DAVIE'S** calculated decision to not file a protest of those criteria or the lack thereof.

As properly concluded by the Administrative Law Judge, **DAVIE** bears the burden of proof to establish that the competitive bid process had been subverted or that the **DEPARTMENT** acted fraudulently, arbitrarily, illegally, or dishonestly in the proposed award

¹ References to the transcript of the November 29, 2001, hearing will be in the form (T.) followed by the appropriate page number(s).

of the Spur Parcel. Based upon the evidence presented, the Administrative Law Judge concluded that the process had not been subverted by the **DEPARTMENT** and that the **DEPARTMENT** had not acted illegally or improperly. See Conclusions of Law No. 23, 24, and 28.

DAVIE also claims that it was reasonable for **DAVIE** to rely on the February 7, 2001, letter from the **DEPARTMENT** revoking the **DEPARTMENT'S** prior offer to convey Parcel 101-A to **DAVIE** for no consideration (Exhibit 30). However, **DAVIE** fails to allege that it did in fact so rely, fails to reveal the legal or factual relevance of its reliance, and fails to reveal what facts in the record establish that **DAVIE** so relied or the relevance of its reliance. The February 7 letter advises **DAVIE** of the procedure the **DEPARTMENT** would follow regarding the Spur Parcel: "the Department will provide the Town of Davie with a right of first refusal after it opens sealed bids received on the combined Parcels A and B." (Exhibit 30) The record is unrefuted that the **DEPARTMENT** did what it said it would do and provided **DAVIE** with a right of first refusal for the Spur Parcel after the bids were opened. As the unrefuted record in this case establishes and the Administrative Law Judge found and concluded, **DAVIE** was on notice of the **DEPARTMENT'S** intended actions. **DAVIE** has failed to demonstrate a lack of competent, substantial evidence in the record to support the conclusion that the **DEPARTMENT** fully complied with the procedure it described regarding the competitive sale of the Spur Parcel or the conclusion that the **DEPARTMENT** did the offer to **DAVIE** of a first right of refusal after the opening of the bids and prior to the competitive sale of the Spur Parcel.

DAVIE fails to cite to any record evidence to support that part of its exception that the

“Department recognized the invalidity of the bid process by initially rejecting all bids.” The record establishes that a rejection of all bids was announced to afford DAVIE its right of first refusal to purchase the Spur Parcel. (Exhibit 43) The rejection of all bids to ensure full compliance with statutory requirements does not constitute an admission of, nor establish a reasonable inference of, any impropriety or invalidity of the process, and DAVIE has offered no authority for such a conclusion. “[A]n agency’s rejection of all bids must stand, absent a showing that the ‘purpose or effect of the rejection is to defeat the object and integrity of competitive bidding.’ A disappointed bidder seeking to overturn an agency’s decision to reject all bids must show that ‘the agency acted fraudulently, arbitrarily, illegally, or dishonestly.’” Gulf Real Properties, Inc. v. Department of HRS, 687 So. 2d 1336 (Fla. 1st DCA 1997) (quoting Department of Transp. v. Groves-Watkins Constructors, 530 So.2d 912, 913-914 (Fla.1988)). No showing has been made by DAVIE that there was any impropriety in the DEPARTMENT’S rejection of all bids in this case and there has, similarly, been no showing that DAVIE met its burden in this regard.

Neither the record nor the law supports DAVIE’S exception to Conclusion of Law No. 29.

DAVIE’S ninth exception is rejected.

DAVIE’S tenth exception is to evidentiary rulings, alleging that it was “harmful error” for the Administrative Law Judge to exclude relevant evidence, including DAVIE’S Exhibits 34, 68, 69, 57, and 46, which DAVIE claims show that the approved appraisal relied on by the DEPARTMENT had been superseded by an April 25, 2001, appraisal conducted by the same appraiser and that the valuation of the property within six (6) months of its offer to

DAVIE was \$463,000 rather than the \$1,900,000 represented by the **DEPARTMENT**.

DAVIE takes exception to the Administrative Law Judge's rulings excluding the admission into evidence of two appraisals prepared on behalf of the **DEPARTMENT**. These appraisals were also the subject of a Motion in Limine filed by the **DEPARTMENT** to exclude any documents or testimony regarding the two appraisals, one dated May 2000 and one dated April 2001, regarding the Spur Parcel.

The basis of **DEPARTMENT'S** motion and its objections to the appraisals and related documents, both in the motion and at the hearing, was that the bid specifications for the competitive sale of the Spur Parcel did not contain any reference to the value of the parcel and, therefore, any value placed on the Spur Parcel is irrelevant in a bid protest proceeding. It is unrefuted in the record that the bid/proposal package for the Spur Parcel did not mention a minimum or maximum bid, or any value based on any appraisal. In ruling on the motion, the Administrative Law Judge concluded, in part: "I don't see that a bid case has anything to do with appraisals." (T. 28) After further discussion on the issue, the Administrative Law Judge affirmed that while the **DEPARTMENT'S** \$1,900,000 approved value "may be challengeable . . . it's not [challengeable] in a bid protest case" (T. 34)

The Administrative Law Judge's exclusion of the appraisals for **DAVIE'S** stated purpose of challenging the **DEPARTMENT'S** "approved appraised value" of the Spur Parcel was outside the scope of the bid protest proceeding. The record is clear and unambiguous that **DAVIE** never challenged the bid/proposal specifications for the competitive letting of the Spur Parcel. The time requirements for protesting the intended award under Section 120.57(3), Florida Statutes, are strictly enforced. Xerox Corp. v. Florida Dep't of Professional Reg., 489

So. 2d 1230 (Fla. 1st DCA 1986). **DAVIE** has never raised any issue of not receiving a “clear point of entry” into these proceedings.

The testimony of **DAVIE’S** administrator established clearly and convincingly that **DAVIE’S** Town Council never considered the acquisition of the Spur Parcel for no consideration nor did it ever consider a price that might be paid or offered for the Spur Parcel. This testimony supports the conclusion that neither an amount to be paid for the Spur Parcel nor the value of the Spur Parcel, except to obtain it at no cost at all, was relevant to **DAVIE**. It was similarly irrelevant to **DAVIE’S** bid protest.

DAVIE’S tenth exception is rejected.

FINDINGS OF FACT

1. After review of the record in its entirety, it is determined that the Administrative Law Judge’s Findings of Fact in paragraphs 1-3, 5-8, and 10-20 of the Recommended Order are supported by competent, substantial evidence and are adopted and incorporated as if fully set forth herein.

2. The first sentence in paragraph 4 of the Recommended Order is modified to reflect that Parcel 101-A was offered to **DAVIE** for no consideration. As modified, the findings in paragraph 4 are supported by competent, substantial evidence and are adopted and incorporated as if fully set forth herein.

3. The second sentence in paragraph 9 of the Recommended Order is modified by substituting the word “Petitioner” for the word “Intervener” therein. As modified, the findings in paragraph 9 are supported by competent, substantial evidence and are adopted and incorporated as if fully set forth herein.

CONCLUSIONS OF LAW

1. The DEPARTMENT has jurisdiction over the subject matter of and the parties to this proceeding pursuant to Chapter 120, Florida Statutes.

2. The Conclusions of Law in paragraphs 21 through 29 of the Recommended Order are fully supported in law. As such, they are adopted and incorporated as if fully set forth herein.

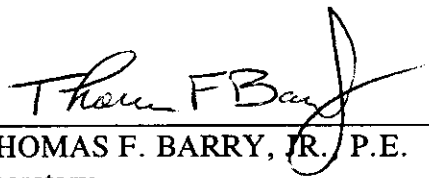
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the Recommended Order as hereinabove modified is adopted in its entirety. It is further

ORDERED that the Respondent, DEPARTMENT OF TRANSPORTATION, shall proceed to finalize the sale of the Spur Parcel based upon the results of the competitive bid.

DONE AND ORDERED this 6th day of March, 2002.


THOMAS F. BARRY, JR. P.E.
Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399

FILED D.O.T. CLERK
2002 MAR - 6 AM 10: 57

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, HAYDON BURNS BUILDING, 605 SUWANNEE STREET, M.S. 58, TALLAHASSEE, FLORIDA 32399-0458, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

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