

UTL.03

Date: August 30, 2013
This instrument prepared
under the direction of:
Kristen Carlson, Chief Counsel
Post Office Box 1249
City: Bartow, Florida 33831-1249
Department of Transportation

F.P. NO. 4295061
PARCEL 120.2
SECTION 13010-000
STATE ROAD 45 (US 41)
COUNTY Manatee

R-13-124

R E S O L U T I O N

ON MOTION of Commissioner Disabatino,
seconded by Commissioner Bena,
the following Resolution was adopted:

WHEREAS, the State of Florida Department of Transportation proposes to construct or improve State Road No. 45 (US 41), Section No. 13010-000, in Manatee County, Florida: and

WHEREAS, it is necessary that certain easement rights now owned by Manatee County be subordinated to the State of Florida Department of Transportation: and

WHEREAS, said subordination is in the best interest of the County: and

WHEREAS, the State of Florida Department of Transportation has made application to said County to execute and deliver to the State of Florida Department of Transportation a subordination of utility interest, or interests, in favor of the State of Florida, and said request having been duly considered.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Manatee County, that the application of the State of Florida Department of Transportation for a subordination of utility interest, or interests, is for transportation purposes which are in the public or community interest and for public welfare; that a subordination of utility interest, or interests, in favor of the State of Florida Department of Transportation, in Manatee County, should be drawn and executed by this Board of County Commissioners. Consideration shall be \$ -0-.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at Bartow, Florida.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded forthwith to the State of Florida Department of Transportation at Bartow, Florida.

DULY ADOPTED with a quorum present and voting this 10 day of September, 2013.



BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: Larry Bustle
Chairperson

ATTEST: R. B. SHORE
CLERK OF THE CIRCUIT COURT

By: R. B. Shore
Deputy Clerk

STATE OF FLORIDA

COUNTY OF _____

I HEREBY CERTIFY that the foregoing is a true and copy of a Resolution adopted by the Board of County Commissioners of _____ County, Florida at the meeting held on the _____ day of _____, 20____.

Name:

Clerk
Board of County Commissioners
_____ County,
Florida

23-UTL.02-05/09

Date: July 15, 2013

This instrument prepared
under the direction of:
Kristen Carlson, Chief Counsel
Post Office Box 1249
City: Bartow, Florida 33831-1249
Department of Transportation

F.P. NO. 4295061
PARCEL 120.2
SECTION 13010-000
STATE ROAD 45(US 41)
COUNTY Manatee

SUBORDINATION OF COUNTY UTILITY INTERESTS

THIS AGREEMENT, entered into this 10th day of September, 20 13, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the FDOT, whose post office address is: Post Office Box 1249, Bartow, Florida 33831-1249 and MANATEE COUNTY UTILITIES SYSTEM, hereinafter called the Utility.

W I T N E S S E T H:

WHEREAS, the Utility presently has an interest in certain lands that have been determined necessary for highway purposes; and

WHEREAS, the proposed use of these lands for highway purposes will require subordination of the interest claimed in such lands by Utility to the FDOT; and

WHEREAS, the FDOT is willing to pay to have the Utility's facilities relocated if necessary to prevent conflict between the facilities so that the benefits of each may be retained.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Utility and FDOT agree as follows:

Utility hereby subordinates to the interest of FDOT, its successors, or assigns, any and all of its interest in the lands as follows, viz:

SEE EXHIBIT "A"

RECORDED

INSTRUMENT	DATE	FROM	TO	O.R. BOOK/PAGE
Easement	06-24-74	Eugene M. Howerdd, Jr., Timothy J. Connolly, Gerald A. Klein, John Denesuk and Pauline E. Denesuk, his wife	Manatee County Utilities System	OR 685 PG 977

PROVIDED that the Utility has the following rights:

1. The Utility shall have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate facilities on, within, and upon the lands described herein in accordance with the FDOT's current minimum standards for such facilities as required by the FDOT Utility Accommodation Manual in effect at the time the agreement is executed. Any new construction or relocation of facilities within the lands will be subject to prior approval by the FDOT. Should the FDOT fail to approve any new construction or relocation of facilities by the Utility or require the Utility to alter, adjust, or relocate its facilities located within said lands, the FDOT hereby agrees to pay the cost of such alteration, adjustment, or relocation, including, but not limited to the cost of acquiring appropriate easements.
2. Notwithstanding any provisions set forth herein, the terms of the utility permits shall supersede any contrary provisions, with the exception of the provision herein with reimbursement rights.
3. The Utility shall have a reasonable right to enter upon the lands described herein for the purposes outlined in Paragraph 1 above, including the right to trim such trees, brush, and growth which might endanger or interfere with such facilities, provided that such rights do not interfere with the operation and safety of the FDOT's facilities.
4. The Utility agrees to repair any damage to FDOT facilities and to the extent provided by Florida Statutes 768.28 indemnify the FDOT against any loss or damage resulting from the Utility exercising its rights outlined in Paragraphs 1 and 3 above.

IN WITNESS WHEREOF, the FDOT hereto has executed this agreement on the day and year first above written.

Executed in our presence
as witnesses:

STATE OF FLORIDA
DEPARTMENT OF
TRANSPORTATION

Signature

By: _____
District Secretary/Designee
for District One

Print/Type Name

Legal Review:

Signature

Print/Type Name

Department Attorney

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this
____ day of _____, 20__ by _____,
District Secretary/Designee for District One. He is personally
known to me or has produced _____
as identification.

(Affix Seal/Stamp here) Notary Signature: _____

Printed Name: _____

Notary Public in and for
the County and State last
aforesaid.

My Commission Expires:

Serial No.: _____

IN WITNESS WHEREOF, the County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson or Vice-Chairperson of said Board, the day and year aforesaid.

ATTEST: *[Signature]*
Signature

R.B. Shore, Clerk of Circuit Court
Print/Type Name

Clerk (or Deputy Clerk)



Manatee County,
Florida,
By Its Board of County
Commissioners

Larry Bustle
Signature 9/10/13

Larry Bustle
Print/Type Name

Its Chairperson
(or Vice-Chairperson)

Grantor(s) ' Mailing Address:

F.P. NO. 4295061

SECTION 13010-000

PARCEL 120

RIGHT OF WAY

A) That portion of the northwest 1/4 of Section 14, Township 35 South, Range 17 East, Manatee County, Florida.

Being described as follows:

Commence at the southwest corner of the northwest 1/4 of said Section 14; thence along the south line of said northwest 1/4, South 89°35'35" East a distance of 1,313.85 feet to the survey base line of State Road 45 (US 41); thence along said survey base line North 00°26'52" East a distance of 59.87 feet; thence South 89°33'08" East a distance of 49.12 feet to the east existing right of way line of said State Road 45 (per FPID. No. 427307-1 Section 13010-000) for a POINT OF BEGINNING; thence along said east existing right of way line North 00°26'52" East a distance of 7.44 feet; thence South 89°33'08" East a distance of 1.50 feet; thence South 00°26'52" West a distance of 7.44 feet to said east existing right of way line; thence along said east existing right of way line North 89°33'08" West a distance of 1.50 feet to the POINT OF BEGINNING.

Containing 11 square feet.

ALSO

B) That portion of the northwest 1/4 of Section 14, Township 35 South, Range 17 East, Manatee County, Florida.

Being described as follows:

EXHIBIT "A"

Commence at the southwest corner of the northwest 1/4 of said Section 14; thence along the south line of said northwest 1/4, South 89°35'35" East a distance of 1,313.85 feet to the survey base line of State Road 45 (US 41); thence along said survey base line North 00°26'52" East a distance of 74.33 feet; thence South 89°33'08" East a distance of 42.00 feet to the east existing right of way line of said State Road 45 (per Section 1301-(117)-(201)119-2502) for a POINT OF BEGINNING; thence along said east existing right of way line North 00°26'52" East a distance of 605.70 feet; thence South 89°39'17" East a distance of 6.34 feet; thence South 27°01'46" West a distance of 3.89 feet; thence South 00°26'52" West a distance of 117.75 feet; thence South 89°33'08" East a distance of 1.49 feet; thence South 00°26'52" West a distance of 14.00 feet; thence North 89°33'08" West a distance of 1.49 feet; thence South 00°26'52" West a distance of 14.36 feet; thence South 26°06'02" East a distance of 9.08 feet; thence South 00°26'52" West a distance of 33.94 feet; thence South 27°01'46" West a distance of 8.85 feet; thence South 00°26'52" West a distance of 47.66 feet; thence South 89°33'08" East a distance of 1.50 feet; thence South 00°26'52" West a distance of 14.00 feet; thence North 89°33'08" West a distance of 1.50 feet; thence South 00°26'52" West a distance of 105.75 feet; thence South 89°33'08" East a distance of 1.50 feet; thence South 00°26'52" West a distance of 14.50 feet; thence North 89°33'08" West a distance of 1.50 feet; thence South 00°26'52" West a distance of 28.40 feet; thence South 26°06'02" East a distance of 11.41 feet; thence South 00°26'52" West a distance of 35.60 feet; thence South 17°51'03" West a distance of 17.09 feet; thence South 00°26'52" West a distance of 138.34 feet to the east existing right of way line of said State Road 45 (per FPID No. 427307-1 Section 13010-000); thence along said east existing right of way line North 44°58'41" West a distance of 6.58 feet to the POINT OF BEGINNING.

Containing 3,322 square feet.

Legal Description Approved by:


James C. Myers, P.S.M. #5922
Date: 07-15-2013
NOT VALID UNLESS EMBOSSED

EXHIBIT "A"

REVISED September 10, 2013 - Regular Meeting
Agenda Item #31

APPROVED in Open Session

Manatee County Board of County
Commissioners

Subject

Subordination of Utility Interests to FDOT, Parcel 120.2

Briefings

None

Contact and/or Presenter Information

Paul Johnson, Property Management, Ext. 6284

Joaquin Servia, Division Manager, Property Management, Ext. 3021

Action Requested

ADOPT Resolution R-13-124; Execute Subordination of County Utility Interests with the State of Florida Department of Transportation (FDOT) for highway purposes. The property is located north of 60th Avenue West on the west side of U.S. 41.

Enabling/Regulating Authority

Florida Statutes 125.35 - County Government

Background Discussion

At the May 7, 2013 Regular Meeting the BCC adopted Resolution R-13-066 and executed the Subordination of County Utility Interests for the same project, Parcel 105.3.

The Resolution and Subordination for Parcel 120.2 is one of the continuous action requests from FDOT.

On June 24, 1974 an Easement recorded in O.R. Book 685 Page 977, was granted to Manatee County from Eugene M. Howard, Jr., Timothy J. Connolly, Gerald A. Klein, John Denesuk, and Pauline E. Denesuk.

If necessary, FDOT is willing to pay for the relocation of the Utility's facilities.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney
Wade

Instructions to Board Records

Please return two certified copies of the Resolution and two original, executed Subordination of Utility Interests to Paul Johnson, Property Acquisition, for forwarding to FDOT for execution and recording.

- Snt res to NC & DB, Snt all copies to PJ and added Res to M Drive - 9/11/13 - SS

Cost and Funds Source Account Number and Name
N/A

Amount and Frequency of Recurring Costs
N/A

Attachment: [Resolution R-13-124 for Parcel 120.2 .pdf](#)

Attachment: [Subordination Parcel 120.2 .pdf](#)

Attachment: [RLS-13-007 by Wade .pdf](#)

Attachment: [Parcel 120 A-B location map Utility Subordination Description .pdf](#)



Office of
**MANATEE COUNTY
ATTORNEY**

Mitchell O. Palmer, County Attorney*

James A. Minix, Chief Assistant County Attorney
Maureen S. Sikora, Assistant County Attorney**
Robert M. Eschenfelder, Assistant County Attorney
Rodney C. Wade, Assistant County Attorney**
William E. Clague, Assistant County Attorney
James R. Conney, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**

MEMORANDUM

DATE: January 16, 2013

TO: Charlie H. Bishop, PMP, Director, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 1-16-13*

FROM: Rodney C. Wade, Assistant County Attorney *Rodney C. Wade*

RE: **Subordination of County Utility Interests to Florida Department of Transportation / Road Improvement Project S.R. 45 (US 41 a/k/a 14th Street West) Between Bayshore Gardens Parkway and 60th Avenue West, Parcels 100.3 and 102.2**
RLS-13-007 Received January 10, 2013; CAO File 8003-121

I have been asked to review a document entitled "Subordination of County Utility Interests" which was presented to Manatee County Public Works Department in a letter dated December 19, 2012, by District One, Florida Department of Transportation ("FDOT"). The letter states that it has attached for our review and execution two subordinations of utility interests covering Parcel 100.3 and 102.2. The letter states that if the facilities need to be adjusted or relocated within the parcels that Manatee County will be eligible for reimbursement pursuant to the agreement. Finally, the letter asks that Manatee County execute the subordination agreements and return them to FDOT office by January 23, 2012, for processing and that FDOT will return one copy of the recorded documents to us for our files.

In reviewing the subordination agreement, I find that the agreement is a standard agreement typically used by FDOT as a utilities form, 23-UTL. 02-05/09. The agreement is between the Florida Department of Transportation and the County of Manatee, Utility Agency Organization. This should be changed to Manatee County Board of County Commissioners or "Manatee County."

Paragraph 1 provides that the Utility (Manatee County) will have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate the facilities on or within the lands

* Board Certified in Construction Law

** Board Certified in City, County & Local Government Law

Charlie H. Bishop, PMP, Director
Property Management Department
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January 16, 2013

described herein, and the lands described herein are an easement recorded October 27, 1992, from Bayshore Gardens Venture to Manatee County in O.R. Book 1411, Page 7459. Continuing in paragraph 1, FDOT agrees to pay the cost of relocation and construction, including the cost of acquisition of appropriate easements should the Utility (Manatee County) require removal or relocation.

Paragraph 2 provides that the terms of the utility permits shall supersede any contrary provisions, except of the provision herein with reimbursement rights.

Paragraph 3 provides that the Utility (Manatee County) has a reasonable right to enter upon the lands for purposes described in paragraph 1, including the right to trim trees and bushes which might endanger the facility, providing that the right do so does not interfere with the operation and safety of FDOT facilities, being the right-of-way U.S. 41.

Paragraph 4 provides that the Utility (Manatee County) agrees to repair any damage to the U.S. 41 facility and indemnify FDOT against any loss or damage resulting from the Utility (Manatee County) exercising its rights outlined in paragraphs 1 and 3. Paragraph 4 should be revised to read as follows:

“4. The Utility agrees to repair any damage to FDOT facilities and to the extent provided by Florida Statutes § 768.28 indemnify the FDOT against any loss or damage resulting from the Utility exercising its rights outlined in paragraphs 1 and 3 above.”

The form of the agreement is consistent with other forms of this nature presented to this office by the Florida Department of Transportation for the subordination of utility interests and with the exception of the additional language required in paragraph 4 above, is in a form that is legal and proper for consideration by the Board of County Commissioners.

Manatee County customarily does not execute these kinds of agreements prior to the execution by the requesting party; however, since Manatee County is granting to the Florida Department of Transportation the subordination of the utility interests, it should execute the agreement first and return it to FDOT for execution and recordation.

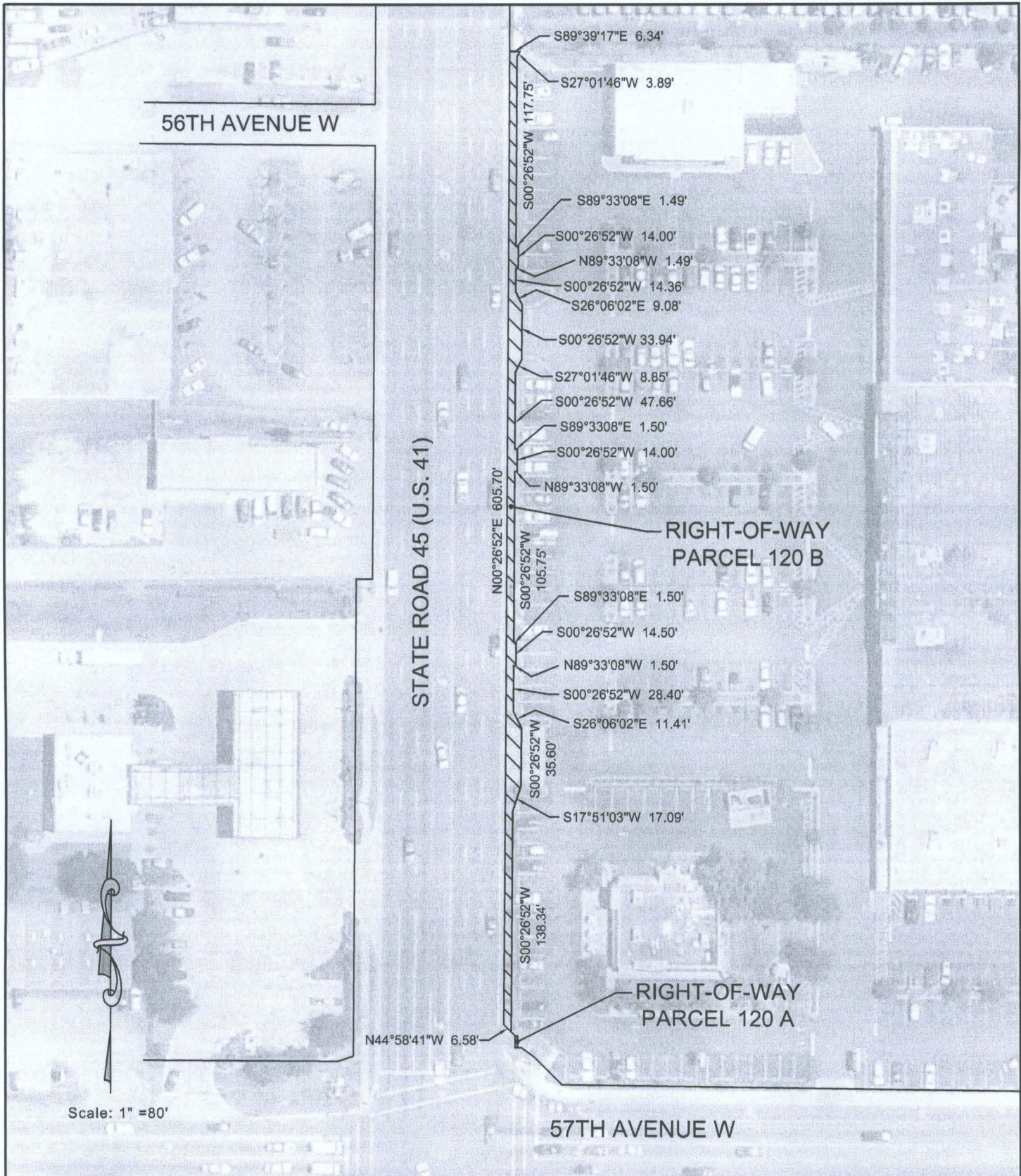
Charlie H. Bishop, PMP, Director
Property Management Department
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January 16, 2013

This completes my response to your Request for Legal Services. Please contact me if you have any questions or if I can be of further assistance.

RCW/slm

cc: Ed Hunzeker, County Administrator
Ron Schulhofer, Director, Public Works Department
Joaquin Servia, Manager, Property Acquisition Division, Property Management Dept.
Wayne Troxler, Manager, Utility Engineering Division, Public Works Dept.

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MANATEE COUNTY PROPERTY
MANAGEMENT DEPARTMENT



1112 MANATEE AVENUE WEST
BRADENTON, FLORIDA, 34205,
(941)748-4501

**F.P. NO. 4295031
SECTION 13010-000
RIGHT-OF-WAY PER FDOT
UTILITY SUBORDINATION
DESCRIPTION**

DWG. Date: August, 2013

DWG. No:

Sheet 1 OF 1

PARCEL 120.2

Drawn By: S. Cooke