



## Legislation Text

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**File #:** 21-0319, **Version:** 1

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**Agenda Item Name:**

Acceptance of the Warny Donation Subject to Access Issues

**Presenter:**

Charlie Houder / (352) 264-6804

**Description:**

Staff requests authorization of the Board of County Commissioners (BoCC) to accept the donation of property from Pierre and Nancy Warny subject to membership in and an assessment by the Watermelon Triangle Corporation, and waiving the Board indemnification policy with respect to the CSX Road Grade Crossing Easement.

**Recommended Action:**

1. Authorize the acceptance of the Warny Donation subject to membership in and the assessment by the Watermelon Triangle Corporation, Inc.
2. Waive the Board indemnification policy with respect to the Corrective Road Grade Crossing Easement from CSX Transportation, Inc. to the Watermelon Triangle Corporation.
3. Authorize the Chair and the Manager to execute documents to close the transaction.
4. Authorize staff to pursue actions to reduce, cap or eliminate the County's liability under the Crossing Easement, including requesting Watermelon Triangle Corporation, Inc. to obtain the insurance specified under the Crossing Easement to cap the County's indemnification obligations, securing a new or separate crossing easement from CSX Transportation, Inc., or secure additional insurance from the County's insurance broker

**Prior Board Motions:**

12/8/2020 - The Board approved Resolution 20-127 accepting the donation of real property from Pierre R. Warny, Jr. and Nancy H. Warny, husband and wife.

**Fiscal Consideration:**

The Corrective Road Grade Crossing Easement from CSX Transportation, Inc. (CSX Easement) requires that Watermelon Triangle Corporation, Inc. (WTC) and its members to indemnify CSX for damages and injuries resulting from the use of the crossing, and it also requires WTC to maintain liability insurance. The premium is divided among paying members. Currently, there is no cap on the liability of WTC and its members under the Crossing Agreement. However, the CSX Easement provides that WTC and its members can cap their collective liability if WTC maintains liability

insurance with coverage of \$3 million per occurrence. To date, WTC has only carried insurance with a \$1 million per occurrence limit. The latest information received by the County indicated an annual premium of \$1,085 for this policy. An assessment charged to the County by WTC for this policy and its corporate filing fee was \$105.56.

This assessment will be paid from the General fund budget of Land Conservation, 001.41.4160.537.xx.xx. As mentioned in the previous, related agenda item, annual operating costs will be approximately \$2,500 and will be paid from the Land Conservation portion of Wild Spaces Public Places, 021.41.4160.537.46.00. There is sufficient budget for both components.

### **Background:**

The 80-acre property offered for donation by Pierre and Nancy Warny consists of sandhills, mesic hammocks and wet prairies of good ecological quality and which would be an important addition to the County's Watermelon Pond Preserve. It directly adjoins the 40-acre King parcel owned by the County and the Ashton Biological Preserve conservation easement. In addition, the county-owned Ferran parcel adjoins the Ashton conservation easement on the west.

Subsequent to the Board's approval of Resolution 20-127, staff completed a survey and environmental site assessment of the property. No items or conditions of concern were identified.

The title insurance commitment procured by the County's closing attorney, David Menet, included one non-standard exception, the Declaration of Submission of Real Property to Watermelon Triangle Corporation. This provided the Warnys and subsequent owners of the property with the benefit of the CSX Easement needed for legal access, but in return, obligated the owner to pay an assessment to WTC.

Initially, the CSX Easement and the WTC assessment did not appear to be significant issues, particularly since the County's King and Ferran parcels acquired in 2006 and 2008, respectively, were already subject to this condition. However, as Mr. Menet examined underlying documents, two concerns emerged.

First, WTC's bylaws provide for foreclosure to satisfy liens placed on a member's property for unpaid assessments. Mr. Menet sought a corporate resolution from WTC waiving this provision for the County, but was unsuccessful. Ultimately, this risk can be mitigated by payment of the assessment.

Second, the CSX Easement includes provisions that violate the County's indemnification policy and further require WTC to maintain a liability insurance policy with coverage of \$3 million per occurrence. Potential liability for the County is increased by the fact that WTC is only carrying insurance with coverage up to \$1 million per occurrence.

Based on a recommendation from Risk Management, staff will pursue negotiations directly with CSX for a separate crossing easement. The County's liability coverage is sufficient to meet the CSX requirements. In addition, the County would require a release or exemption from any indemnification requirement. If successful, the agreement would cover the Ferran and King parcels in addition to the Warny property.

In the meantime, the Warnys have delivered a signed deed for an expected March 12 closing. Mr. Menet is currently holding the deed and funds for closing costs in escrow.

