

Wake County Board of Education

FACILITIES

PRECIS

Subject

OFFER TO PURCHASE AND CONTRACT FOR SALE OF APPROXIMATELY 9.5 ACRES OF SURPLUS LAND IN MATTHEWS, NORTH CAROLINA

Staff Liaison Present

Joe Desormeaux, Betty L. Parker

Main Points

The Board of Education owns 9.5 acres of land on Rice Road in Matthews, NC that was acquired through a fine and forfeiture process in May 2009, being more particularly described as having Mecklenburg County PIN 19343201 and PIN 19343202. The Board of Education declared the property as surplus property and ordered its sale on July 21, 2009. On October 7, 2009, Mecklenburg County staff confirmed that Mecklenburg County had no need for this property or interest in purchasing it at fair market value. Terms and conditions of an Offer to Purchase and Contract have been received requesting the sale of the 9.5 acres to the Town of Matthews, at a purchase price of Two Hundred Ninety-Five Thousand Four Hundred Twenty-Seven and 00/100 (\$295,427.00) Dollars. An appraisal has been recently performed indicating a fair market value of \$341,000. A map illustrating the parcels in question and relevant valuation benchmarks are included on an attachment hereto as well as an explanation of the surplus property process.

Fiscal Implications

Net Income to the Board of Education is estimated to be \$241,127 reflecting the purchase price of \$295,427 less \$54,300 to be paid to the N.C. Board of Elections per the fine & forfeiture court order which is required to be paid.

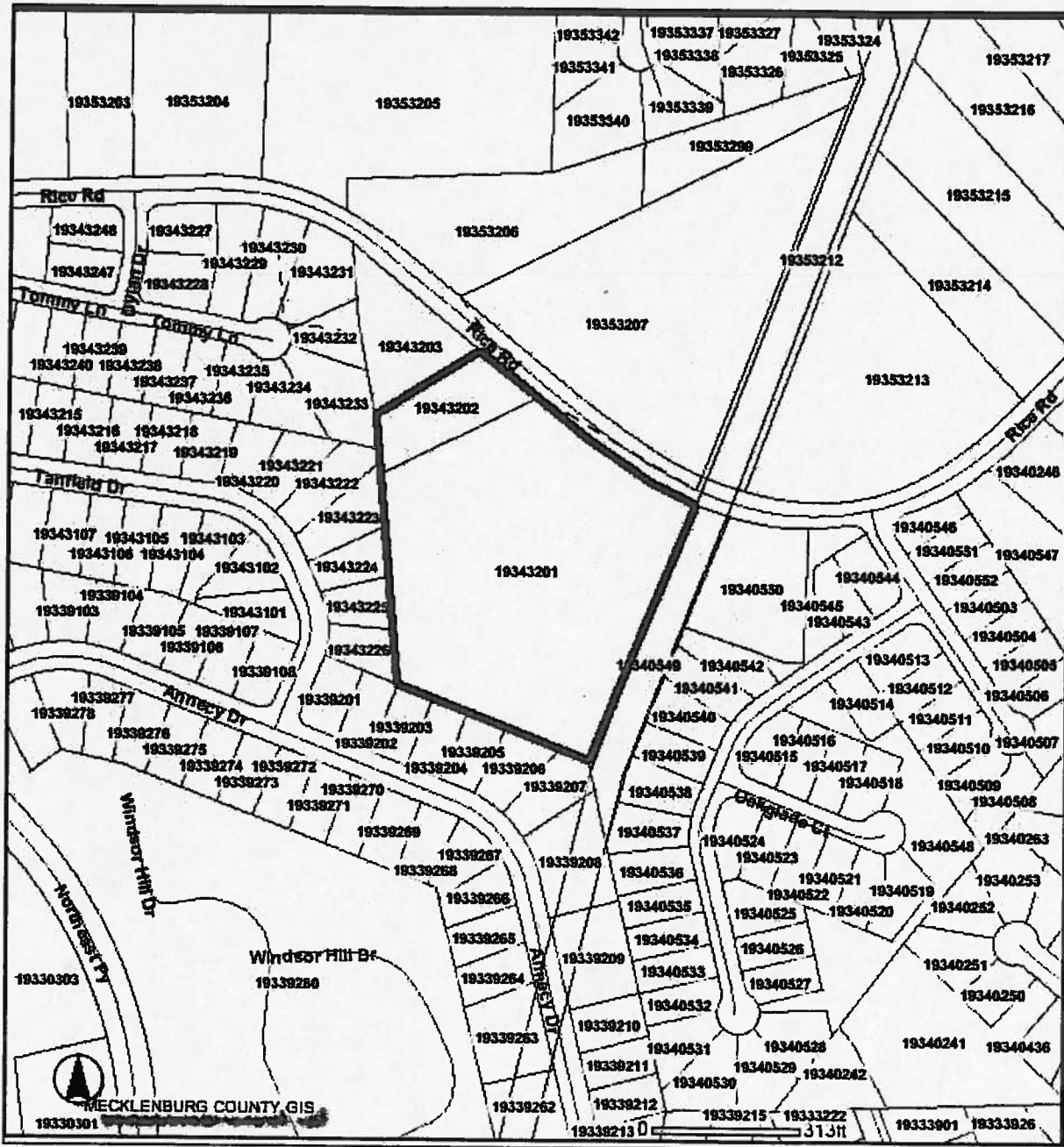
Savings

None.

Recommendation for Action

Board consideration and direction to staff, subject to and conditioned upon completion of the appropriate statutory requirements as described in N.C.G.S. 115C-518 and N.C.G.S. 160A.

PRECIS Exhibit: Rice Road Properties



Valuation Benchmarks

Valuation	Date	Subject	Acreage	Total Value	Price/Acre*
Tax Assessment	January 17, 2003	Subject Property	9.5 acres	\$143,900	\$15,148/acre
Owner's Appraisal	May 2009	Subject Property	9.5 acres	\$615,000	\$64,737/acre
WCPSS Appraisal	November 2009	Subject Property	9.5 acres	\$505,000	\$53,157/acre
Town Appraisal	September 12, 2011	Subject Property	9.5 acres	\$335,000	\$35,263/acre
WCPSS Appraisal	September 30, 2011	Subject Property	9.5 acres	\$341,000	\$35,895/acre
Town Appraisal	October 18, 2011	Adjacent Property	0.82 acres	\$ 25,500	\$31,998/acre

* indicates a rounded value

WCPSS Surplus Property Disposition Process

1. Declaration of Surplus by Board of Education. When the use of any building site or other real property owned or held by the board is unnecessary or undesirable for public school purposes, the Board of Education may dispose of such real property according to the procedures prescribed in General Statutes, Chapter 160A, Article 12, or any successor provisions thereto.

2. Opportunity to Acquire the Property Afforded to Wake County Commissioners. North Carolina General Statutes require that the Wake County Commissioners be afforded the first opportunity to obtain the property at a fair market price value or at a price negotiated between the two boards. If the board of commissioners does not choose to obtain the property as offered, the board of education may dispose of such property according to the procedures described in the statute. The most common method of sale utilized in the sale of Board-owned real property is known as "negotiated offer, advertisement and upset bid."

3. Receipt of Offer To Purchase. The Board may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. Offers To Purchase are submitted to WCPSS Real Estate Services Department for review and negotiation of terms.

4. Presentation of Offer to the Board of Education for Consideration of Approval. WCPSS staff presents the Offer to the Board of Education in open session, and provides information and recommendations where appropriate. If the Board proposes to accept the offer, the offeror is required to deposit five percent (5%) of his bid as earnest money deposit.

5. Advertisement for Upset Bids. Once an offer is deemed acceptable by the Board of Education, a notice of the offer is published in the newspaper. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder.

When a bid is raised, the bidder shall deposit five percent (5%) of the increased bid, and the Board shall re-advertise the offer at the increased bid. This procedure shall be repeated until no further qualifying upset bids are received.

The Board may at any time reject any and all offers

6. Acceptance of the offer. Once the notice/upset bid process is complete, the Board may accept and execute the offer and proceed to closing on the contract terms to sell the property to the highest bidder.

NORTH CAROLINA

WAKE COUNTY

OFFER TO PURCHASE AND CONTRACT

WHEREAS, the Town of Matthews, North Carolina ("Buyer") hereby agrees to purchase and Wake County Board of Education ("Seller") hereby agrees to convey two parcels of land collectively totaling 9.5 acres located on the southern side of Rice Road, in the Town of Matthews, Morningstar Township, Mecklenburg County, North Carolina being described as having Mecklenburg County PIN 19343201 and PIN 19343202, as shown in Deed Book 24775, Page 103, Mecklenburg County Registry, and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, together with all improvements located thereon (except as hereinafter described) and all appurtenances thereto belonging or appertaining, and all right, title and interest which Seller may have in all creeks, streams, rights-of-way, easements, roads, streets and ways bounding said property (the "Property").

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged and confessed, the parties hereto agree to the following terms and conditions:

1. **PURCHASE PRICE:** The purchase price of Two Hundred Ninety-Five Thousand Four Hundred Twenty-Seven and 00/100 (\$295,427.00) Dollars shall be paid as follows:
 - A. An initial good faith Earnest Money deposit of 5% of the purchase price per NCGS§ 160A-269 which amounts to Fourteen Thousand Seven Hundred Seventy-One and 35/100 (\$14,771.35) Dollars shall be paid by Buyer to be delivered to Boxley, Bolton, Garber & Haywood, LLP, upon execution of this Contract by Buyer with the delivery of this contract, to be held in trust until the sale is closed, at which time it will be credited to Buyer. In the event Buyer fails, refuses or is unable to close the transaction in accordance with the terms of this Offer To Purchase and Contract, Seller will retain the deposit as liquidated damages.
 - B. Buyer shall pay Seller the balance of the purchase price at closing by certified check, official bank check, or wire transfer of funds, said amount being the sum of Two Hundred Eighty Thousand Six Hundred Fifty-Five and 65/100 (\$280,655.65) Dollars.
2. **CONDITIONS:** The obligation of Buyer to purchase the Property is subject to the satisfaction at or prior to closing of the following conditions:
 - A. Title must be delivered at closing by Special Warranty Deed and must be fee simple marketable title, free of all encumbrances and assessments, utility easements and unviolated restrictive covenants, neither of which materially affect the value of the Property and such other encumbrances as may be assumed or specifically approved by Buyer. The Property must have legal access to a public right-of-way.
3. **FAILURE OF CONDITIONS:** If any of the conditions in this document are not met, Buyer has the option to waive the satisfaction of any unsatisfied conditions. If Buyer elects not to waive the satisfaction of any unsatisfied conditions, Buyer shall have the right to rescind the contract and recover all of its earnest money deposit.

4. SELLER REPRESENTATIONS AND WARRANTIES: Seller makes the following representations and warranties to and for the benefit of Buyer which shall be true on the date of closing as though such representations and warranties were made at such time and shall survive the passing of title:
 - A. ASSESSMENTS: Seller warrants that there are no encumbrances or special assessments, either pending or confirmed, for sidewalk, paving, sewer, water, or other improvements on or adjoining the Property.
 - B. CLAIMS AND SUITS: Seller has not entered into any agreement including leases or rental agreements with reference to the Property and neither Seller nor the Property are subject to any claim, demand, suit, unfiled lien, proceeding or litigation of any kind, pending or outstanding, or to the knowledge of Seller, threatened or likely to be made or instituted which would in any way be binding upon Buyer or its successors or assigns or affect or limit Buyer's full use and enjoyment of the Property or which would limit or restrict in any way Seller's right or ability to enter into this contract and consummate the sale and purchase contemplated hereby.
5. PRORATIONS AND ADJUSTMENTS: Unless otherwise provided, the following items shall be prorated and adjusted between the parties or paid at closing:
 - A. All late listing penalties, if any, shall be paid by Seller.
 - B. Seller shall not be responsible for any brokerage commission due as a result of this sale. Buyer by its execution hereof states that it has not been represented by any real estate broker in this transaction and Buyer agrees to indemnify and hold Seller harmless against any real estate commission claimed by any parties allegedly representing Buyer in this transaction.
6. LABOR AND MATERIAL: Seller shall furnish at closing an affidavit and indemnification agreement in a form satisfactory to Buyer showing that all charges for labor or materials, if any, furnished to the Property within 120 days before the date of closing have been paid and agreeing to indemnify Buyer against all loss from any claim arising therefrom.
7. CLOSING EXPENSES: Seller shall pay for the preparation of a deed which shall be prepared by Seller's attorney and for the revenue stamps required by law. Buyer shall pay for recording the deed. Buyer and Seller shall each pay their respective attorneys fees.
8. ASSIGNMENT: This contract may not be assigned without the written agreement of all parties, but if the same is assigned by agreement, then the same shall be binding on the assignee and his heirs.
9. BINDING EFFECT: This contract shall be binding and shall inure to the benefit of the parties and their heirs, successors and assigns.
10. SURVIVAL: Any provision of this agreement which by its nature and effect is required to be observed, kept or performed after the closing shall survive the closing and remain binding upon and for the benefit of the parties until fully observed, kept or performed.
11. SELLER'S AUTHORITY: Seller warrants and represents that they have full and complete power and authority to enter into this contract in accordance with all the

provisions contained herein and that there is no person or entity that has any interest in the Property other than the parties to this agreement.

12. RIGHTS OF BUYER PRIOR TO CLOSING FOR ENTRY AND INSPECTION: Buyer and Buyer's agents or employees shall have the right to enter upon the Property at reasonable times with the prior written authorization of Seller to survey the Property and to conduct such other inspections, tests and studies as Buyer may deem necessary (collectively, the "Inspections"). Buyer and/or its agents, representatives, contractors, subcontractors and consultants shall be adequately insured regarding such work. Seller shall grant Buyer's reasonable requests for entry upon the Property with the agreement that Buyer shall not unreasonably interfere with Seller's use of the Property or damage the Property and provided further that Buyer shall leave the property in substantially the same or better condition as it was prior to the entry thereon by Buyer or its agents or employees or, in the event of any damage to the Property, Buyer shall repair and restore the Property substantially to its prior condition. Buyer agrees to indemnify and hold harmless Seller from any loss or damage to persons or property, including reasonable attorneys' fees, arising out of the entry upon the property by Buyer, its agents or employees, or arising out of the inspections that Buyer, its agents or employees may conduct pursuant to this Paragraph.
13. CONDITION OF PROPERTY: Buyer shall purchase the Property in an "as-is, with all faults" condition and hereby acknowledges and agrees that it is relying solely upon its own inspections, investigations and analyses of the Property in entering into this Offer to Purchase and Contract and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material from Seller or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding the Property.
14. RISK OF LOSS: The risk of loss prior to closing, which shall include personal property, shall be upon the Seller.
15. POSSESSION: Exclusive possession of the Property free and clear of occupancy by all persons, firms or corporations, whether or not under claim of right or color of title, shall be delivered to Buyer at closing on the conditions required in this Offer to Purchase and Contract.
15. TIME IS OF THE ESSENCE: Time is of the essence with regard to the terms and conditions contained in this Offer to Purchase and Contract.
16. CLOSING: The parties agree to execute any and all documents and papers necessary in connection with the closing and transfer of title within 45 days of the date that a copy of the fully executed contract is received by Buyer via electronic mail transmission. The deed is to be made to The Town of Matthews, a municipal corporation of the State of North Carolina.
18. COUNTERPARTS: This offer shall become a binding contract when signed by both Buyer and Seller in four (4) counterparts with an executed counterpart being retained by each party.
19. CONSTRUCTION: No provision of this Offer to Purchase and Contract shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

- 20. SEVERABILITY. In case anyone or more of the provisions contained in this Offer to Purchase and Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Offer to Purchase and Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 21. SELLER REMEDIES CUMULATIVE. The rights and remedies of Seller specified in this Offer to Purchase and Contract shall be cumulative and in addition to any other rights and/or remedies otherwise available, whether or not specified in this Offer to Purchase and Contract.
- 22. MEMORANDUM OF CONTRACT: Each party hereto reserves the right to obtain upon request the execution by the parties of a Memorandum of Contract suitable for recordation in the Office of the Register of Deeds of Mecklenburg County. The requesting party shall pay all expenses for preparation and recordation of said Memorandum(s). This contract itself may not be recorded without the prior written permission of Buyer and Seller. If Buyer records a memorandum of contract, Buyer shall furnish a notice of termination that Seller can record.
- 23. COMPLETE AGREEMENT: This Offer to Purchase and Contract contains the entire contract between the parties hereto regarding the subject matter hereof and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Offer to Purchase and Contract not specifically set forth herein. It may not be modified orally or in any manner except by agreement in writing by the parties hereto.

IN WITNESS THEREOF, the parties have hereunto set their hands and seal the day and year indicated below.

Date of Offer: _____

Date of Acceptance by Board of Education: _____

Buyer:
TOWN OF MATTHEWS

By: _____
Mayor

Attest: _____
Town Clerk

Seller:
WAKE COUNTY BOARD OF EDUCATION

By: _____
Chair

Attest: _____
Superintendent

Exhibit "A"

Legal Description:

Being that certain land lying and being in the Town of Matthews, Morningstar Township, Mecklenburg County, North Carolina and being more particularly described as follows:

Tract One:

BEGINNING at an iron located in the southeasterly corner of that certain property described in deed recorded in Book 1821 at Page 422 in the Mecklenburg Registry and runs thence from said beginning point with the southerly line of the property described in said deed S. 66-35 W. 360 feet to a point in the line of the Rice land (now or formerly); thence with a line of the Rice land (being also the westerly line of the property described in the above mentioned deed) N. 4-12 W. 125.0 feet to a point in said line; thence with a new line running in a northeasterly direction approximately 337 feet to a point in the northeasterly line of the above mentioned property described in deed recorded in Book 1841 at Page 422 in the Mecklenburg Registry; and thence with said line of said property W. 33-41 E. 145.0 feet to the point and place of BEGINNING.

Tract Two:

BEGINNING at a point in the southerly margin of Rice Road, said point marking the southeasterly corner of that certain tract of land conveyed to Zorabelle Query Thompson Francis by deed dated June 19, 1956, and recorded in Book 1841, Page 422 in the Mecklenburg County Registry, and runs thence S. 58-15 E. 425.5 feet to a railroad spike in the center line of said Rice Road; thence S. 22-44 W. 616 feet to an iron and stone in the line of Frank Griffin (now or formerly); thence with Griffin's line N. 70-16 W. 439.70 feet to an old iron in the line of the Rice lands; thence N. 4-12 W. 479.9 feet, more or less, to a point in Rice's line; thence N. 66-35 E. 360.0 feet to the point and place of beginning and containing 8.42 acres as the same is shown on map of J. W. Query Lane prepared by O.J. Byrnes Jr., Registered Surveyor, dated July 1953.