

Business Operations  
J.E. Surash, P.E., Chief Business Officer

**SUBJECT:           ADOPT RESOLUTION NO. 03-58 AUTHORIZING THE SUPERINTENDENT TO INITIATE EMINENT DOMAIN PROCEEDINGS TO ACQUIRE ADDITIONAL LAND CONSISTING OF ± 7.5 ACRES REPRESENTING THE FINAL PORTION OF A PROPOSED ASSEMBLAGE OF PROPERTIES LOCATED BETWEEN N.E. 26 AVENUE AND WEST DIXIE HIGHWAY & BETWEEN N.E. 211 TERRACE AND N.E. 209 STREET, MIAMI, FLORIDA, TO SITUATE STATE SCHOOL "D"**

**COMMITTEE:       FACILITIES MANAGEMENT**

Background

In accordance with School Board (Board) Rule 6Gx13-2C-1.083, the School Site Planning and Construction Committee (SSPCC), at its December 9, 2003 meeting, recommended that staff present an item to the Board requesting approval of a Resolution to initiate eminent domain proceedings to acquire additional land consisting of ± 7.5 acres (Subject Site) representing the final portion of a proposed assemblage of properties totaling ± 9.8 acres, for State School "D". The Subject Site is located in ACCESS Center 2 between N.E. 26 Avenue and West Dixie Highway & between N.E. 211 Terrace and N.E. 209 Street, Miami, Florida (see attached location map). State School "D" will provide relief for Virginia A. Boone/Highland Oaks Elementary School, Ruth K. Broad/Bay Harbor Elementary School and Ojus Elementary School, which as of December 2003, were operating at permanent F.I.S.H. capacities of 148%, 161%, and 243%, respectively.

Funding for site acquisition was allocated in the 2002-2003 fiscal year as part of the Five-Year Work Program. Funding for construction has been allocated in the 2005-2006 fiscal year. It should be noted that Ojus Elementary School is scheduled to undergo construction of 531 additional student stations, which is anticipated to be completed for the 2005-2006 school year. The SSPCC's recommendation to initiate eminent domain proceedings to acquire the additional land was made after staff had exhausted all efforts to negotiate willing sales as described below.

Analysis

Pursuant to Board Rule, an informational packet consisting of potential school sites and preliminary due diligence for State School "D" was presented to the SSPCC at its January 9, 2003 and March 5, 2003 meetings for review and direction. Based on input from Region/ACCESS Center 2, Department of Transportation, and School Operations staff,

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and in addition to its own discussion of the proposed sites, the SSPCC recommended that staff negotiate and execute conditional purchase and sale agreements (Agreements) to acquire by assemblage, sufficient acreage to situate State School "D". The Agreements were based on a not-to-exceed purchase price as established in a restricted use appraisal and subject to completion of further due diligence to include environmental assessments, additional appraisal analysis and final Board approval.

Pursuant to the SSPCC's recommendations, staff was successful in negotiating the purchase of two properties. The first site acquired is a  $\pm 1.5$  acre tract of vacant land, located at N.E. 211 Terrace and West Dixie Highway, Miami, Florida (see Parcel A on location map). The Board approved this acquisition at its September 10, 2003 Board meeting and title was transferred to the District on September 29, 2003. The second site acquired is a  $\pm .77$  acre parcel of vacant land, located at theoretical N.E. 210 Street and West Dixie Highway, Miami, Florida (see Parcel E on location map). The Board approved this acquisition at its October 22, 2003 Board meeting and title transferred to the District on November 7, 2003. All other property owners, however, remain opposed to a sale, necessitating the initiation of eminent domain proceedings to acquire the additional land.

It should be noted that the SSPCC's recommendation to pursue the assemblage as the primary site for the school was made after having eliminated an alternate site approximately 16.34 acres in size, located at 20000 West Dixie Highway, Miami, Florida. The alternate site had been used previously as a trailer park, but had since been purchased by an independent third party and rezoned for commercial use. Due to the change in zoning status, the estimated fair market value of the alternate site, as established in a full appraisal, increased significantly. Consequently, the estimated fair market value of the alternate site exceeds that of the proposed assemblage (including the two parcels already purchased), by 38%. Moreover, the final asking price for the alternate site was 42% above appraised value for the assemblage.

#### The Condemnation Process

Pursuant to Section 73.015, Florida Statutes, governing actions in Eminent Domain, pre-suit negotiations are required before an eminent domain proceeding can be filed. As such, the District must attempt to negotiate in good faith with the owners of the properties to be acquired, provide a written offer and, if requested, a copy of the appraisal upon which the offer is based. Accordingly, based on the fair market value established in the appraisal process, and subject to Board approval of eminent domain proceedings, staff will forward to the owners the prerequisite purchase offer for their consideration. The owners will then have 30 days to review and act on the offer before a condemnation suit can be filed. If the owners respond to the offer, the District will negotiate in good faith before filing suit, if necessary. If the owners remain unwilling to sell, the District's Eminent Domain Counsel ] REVISIED will then prepare the condemnation suit. The suit will combine into one filing, all property owners who remain opposed to a sale. From that point forward, pursuant to Sections 73.091 and 73.092, Florida Statutes, the District would be responsible for fees and costs of the property owners. These include the owners' attorney fees (if the owner recovers more than the District's first written offer), and all costs reasonably incurred through the use of expert witnesses. Typical expert fees include fees for appraisers, land planners and engineers. A detailed summary of the Condemnation process and attendant costs,

prepared by the District's Eminent Domain Counsel, was previously provided to the Board in April 2003, and is attached hereto and labeled as Exhibit "A".

In accordance with the governing Board Rule, a copy of the full record of the site selection and investigation process will be provided to the Board as supplemental information prior to the Board meeting.

#### Additional Information

As indicated above, staff has conducted substantial due diligence for the Subject Site as required by the governing Board Rule, with the exception of a Phase II environmental assessment and trenching. These activities could not be undertaken, since District staff did not have authorization to access the Subject Site and, as such, will need to be undertaken under court order prior to the filing of an Order of Taking. A Phase I environmental audit is currently underway and the results will be provided to the Board as supplemental information prior to the Board meeting.

#### Subject Site

The Subject Site is  $\pm 7.5$  acres in size and is comprised of a combination of vacant land and improved properties as described below:

#### Parcel B

This parcel is a  $\pm 4.71$  acre tract of vacant land and is zoned for residential use. The owner is Philip Pearlman, Trustee. This property is located on N.E. 26 Avenue between N.E. 211 Terrace and theoretical N.E. 210 Street, Miami, Florida, and is legally described in the attached Resolution.

#### Parcel C

This parcel is  $\pm .87$  acres in size and is zoned for commercial use. This parcel is improved with an operating Montessori School with an enrollment of approximately 100 elementary school students. The owners of the property are Clive Uston and Jay Goldman, Trustees. This property is located at 21060 West Dixie Highway, Miami, Florida, and is legally described in the attached Resolution.

#### Parcel D

This parcel is  $\pm .57$  acres in size and is zoned for commercial use. This parcel is improved with a Social Club. The owner of the property is the Croatian American Social Club, Inc. This property is located at 21038 West Dixie Highway, Miami, Florida, and is legally described in the attached Resolution.

#### Parcel F

This parcel is a  $\pm 1.36$  acre tract of vacant land and is zoned for residential use. The owner of this property is The Kaballah Center. This property is located on N.E. 26 Avenue and N.E. 209 Street, Miami, Florida, and is legally described in the attached Resolution.

Summary of Due Diligence Results: A copy of completed due diligence records for the Subject Site will be submitted to the Board as supplemental information prior to the Board

meeting, and a copy placed with Citizen's Information.

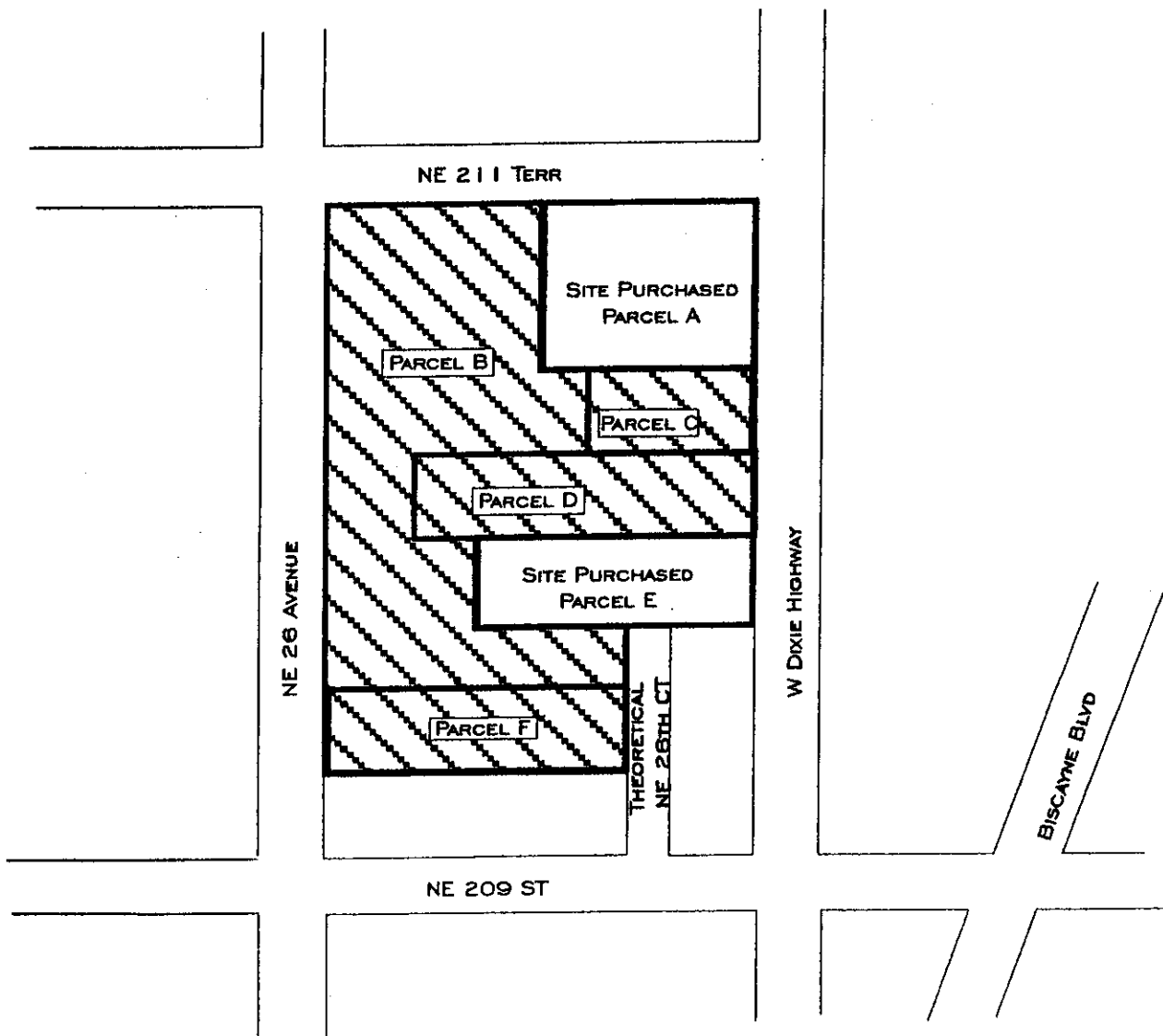
1. Determination of Historic or Cultural Resources: The Miami-Dade County Historic Preservation Division has indicated that the Subject Site has no archeological designations.
2. Jurisdictional Statements: Both the South Florida Water Management District and the Department of Environmental Resources Management (DERM) have indicated that a portion of the Subject Site contains wetlands. DERM has also advised that the Subject Site contains specimen size trees which will require a tree permit for removal or preservation. Additionally, DERM's water control section has indicated that the Subject Site is not subject to water retention requirements. The Army Corps of Engineers has indicated that the Subject Site is non-jurisdictional.
3. Phase I Environmental Audit: The Audit is currently underway and the results will be presented to the Board as supplemental information prior to the Board meeting.
4. Comprehensive Plan/Zoning Compliance: The Miami-Dade County Planning and Zoning Department has indicated that the acquisition of this property for a new elementary school is in conformity with the Comprehensive Development Master Plan.
5. Aviation: The Miami-Dade County Aviation Department has indicated that the Subject Site is compatible with airport operations, as it is located outside the No-School Zone.

**RECOMMENDED:**



That the School Board of Miami-Dade County, Florida, adopt Resolution No. 03-58 authorizing the Superintendent or his designee to initiate eminent domain proceedings to acquire +7.5 acres, as described above, representing the final portion of a proposed assemblage of properties located between N.E. 26 Avenue and West Dixie Highway & between N.E. 211 Terrace and N.E. 209 Street, Miami, Florida, to situate State School "D", pursuant to the recommendation of the School Site Planning and Construction Committee.

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# LOCATION MAP



## LEGEND

	PORTION OF PROPOSED ASSEMBLAGE ALREADY ACQUIRED BY THE BOARD (PARCELS A & E) ± 2.29 ACRES VACANT LAND
	SUBJECT SITE ± 7.5 ACRES (PARCELS B, C, D, & F)
TOTAL ASSEMBLAGE ± 9.8 ACRES	

