

December 19, 2003

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

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 ± 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, District Counsel 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 ± 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 ± 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 ± 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.

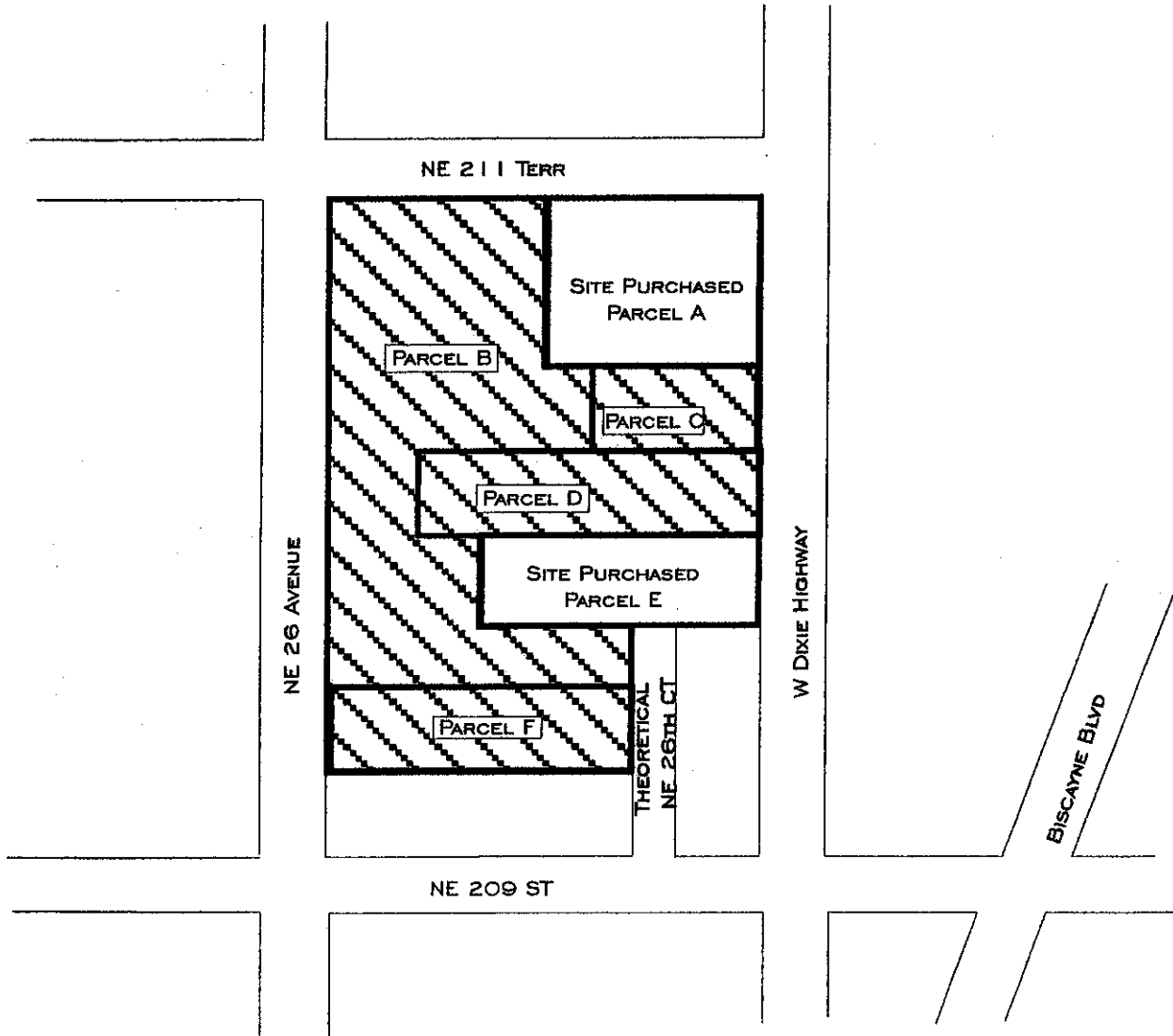
1. Determination of Historic or Cultural Resources: The Miami-Dade County Historic Preservation Division has indicated that the Subject Site has no archeological designations.
2. Jurisdictional Statements: Both the South Florida Water Management District and the Department of Environmental Resources 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.

JB:rr

LOCATION MAP



LEGEND



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



EXHIBIT A

MEMORANDUM

April 8, 2003

TO: Mr. Agustin J. Barrera, Member

FROM: *for* Merrett R. Stierheim, Superintendent of Schools

**SUBJECT: SCHOOL BOARD MEETING OF APRIL 9, 2003 AGENDA ITEM E-1,
CONDEMNATION TIME LINES**

In response to your request for additional information during the Facilities Management School Board Committee meeting of March 27, 2003 regarding estimated time frames relative to the condemnation process, the District's Eminent Domain Counsel (Counsel) has prepared a synopsis of estimated time lines for condemnation actions (See Attachment "A").

In addition, for informational purposes, Counsel has prepared a more detailed explanation outlining the entire condemnation process (See Attachment "B").

Should you have any questions or need additional information, please contact Ms. Ana Rijo-Conde, Interim Assistant Superintendent, Facilities Operations, Maintenance and Planning at (305) 995-7285.

MRS:rr
M2289

cc: School Board Members
Mr. Johnny Brown
Ms. Ana Rijo-Conde

Attachment "A"

CONDEMNATION TIME LINE

<u>ACTION</u>	<u>APPROXIMATE TIME TO COMPLETION</u>
Presuit Negotiation letter under 73.015	30 days. Negotiations are ongoing beyond the standard 30 days.
Initial Filing of the Condemnation	Generally, 30 days after the presuit letter has been served.
Order of Taking Hearing	Generally, 60 to 90 days after the filing of the eminent domain suit. However, depending on the length of time needed for the hearing, the court may place this proceeding on the nonjury docket. This could extend the time to 4 to 6 months.
Title to the property Transfers to the District	The actual transfer of title occurs after the order of taking is entered by the judge when the good faith deposit is made. This deposit must be made within 20 days of the order of taking. At this point the District can begin construction of the school.
Total estimated time before District can begin construction	Four to six months
Trial for final determination of property value	This generally occurs 1 to 2 years after the initial filing of the eminent domain suit.

Attachment "B"

INTEROFFICE MEMORANDUM

To: Thomas Bolf, Esq.
Office: Fort Lauderdale
From: Dale Alan Bruschi
Date: April 7, 2003
Re: Miami-Dade School Board Condemnation Matters
cc: File

Procedures for Condemnation of Property.

I. PRE-SUIT PROCEDURES

Prior to instituting eminent domain proceedings to acquire a parcel of property, the condemning authority should follow a set of pre-suit procedures covering all due diligence aspects before acquiring any piece of property. Because types of real estate can vary greatly, it is not possible to have one set of guidelines that will cover all eventualities. However, by utilizing the appropriate experts, the appropriate issues can be identified. The following is a good set of procedures to cover most acquisitions.

Physical Inspection

All aspects of the property acquisition should be written and notes of all conditions should be kept in a property gusset for that parcel. A physical on-site inspection of the property is the first step toward its acquisition. [Note: For an on-site inspection, the Property Owner should be advised of the inspection, and their consent obtained for the inspection. No consent is needed to view a site from public roads, and if a property is open for business (i.e. restaurant, retail store), no consent is needed to conduct business at the site.] The date the site was inspected and follow up visits should all be documented. Photographs can be invaluable, and are strongly encouraged. Multiple inspections will cover unforeseen problems that might occur to the property after an initial inspection.

The following are some of the items that should be noted:

(If the property is less than a full take then each of these items should be noted as to what items exits on the parent tract and what items on the part taken)

- a. Is there a mobile home on the site?
- b. Is the land vacant or improved?
- c. Is the land being used for a residential or business use.
- d. Are there trees, shrubs etc on the property. (all varieties should be logged and noted)
- e. Fencing, gates – types, size, height, length
- f. Signs on the property.
 1. Trade signs for the fee owner or the tenant
 2. Outdoor Advertising Signs
- g. Sheds, Barns, etc.
- h. Above ground utility use (poles, meters, etc)
 1. Power
 2. Telephone
 3. Water
 4. Septic Tanks, sewer
 5. Cable
- i. Signs of dumping (trash cans, drums, etc.)
- j. Inspection of the surrounding properties
 1. characteristics of the neighborhood that would indicate further investigation:
 - a. Property utilized for any industrial purpose.
 - b. Property that has upon visual inspection environmental contamination: old cars, oil drums etc.
 2. uses that would be utilizing caustic chemicals; drycleaning businesses, agriculture businesses, automotive repairs, etc.
- k. Wetlands issues:
 1. Are there any wetlands on the property or surrounding properties.
 2. Are there any canals, rivers, streams, ponds or other water source on or near the property?

These are some of the aspects of a thorough written physical inspection of the property. Each item should be noted and specifically reviewed by the inspector. In addition, discussions with neighboring property owners are helpful and can lead to additional information on the subject property.

It is recommended that legal counsel, appraiser(s), engineer(s), land planner(s), environmental engineer(s), fixture appraiser(s), and general contractor(s) visit the site at the initial inspection. This will allow the identification of issues that a non-expert might not identify, and also will allow the "team" to share initial thoughts on what follow up may be necessary. If the site is expected to be a significant six figure or more acquisition, then the presence of these experts can save significant time, money and energy, and the cost of their presence is fully warranted. Hopefully, one or more of the experts will eliminate areas of concern, thereby minimizing future efforts by the expert(s). On most, if not all, properties, a Phase I environmental audit should be conducted.

Legal Inspections

A physical inspection on the property only gives half the picture to the purchaser. Proper due diligence requires a number of legal inspections which should be undertaken in order to get an accurate view of the property.

- a. Current legal title to the property should be determined.
- b. Review of all encumbrances on the property.
- c. The chain of title to the property should be acquired.
- d. Zoning and Land use for the property should be noted.
 1. A comparison between the present use and the current zoning and land use should be determined.
- e. All legal, illegal, conforming and nonconforming uses on the property should be determined.
- f. All interested parties should be identified (i.e. mortgage holders, easement holders, lien holders, judgments against the property owner, interests of any tenants etc.).
- g. All prior sales of the property should be acquired.
- h. All prior listings of the property for sale should be acquired.
- i. Any code violations for the property should be investigated and noted.
- j. Any request for lowering the property tax assessment on the property should be investigated and noted.
- k. All right of way maps, aerial photographs going back five years should be inspected and noted. Changes occurring to the property over time can be noted on the aerials.
 1. All master plans, 5 and 10 year road way plans should be reviewed.
- m. The thoroughfare map for the area should be reviewed.
- n. Appraisals previously done for banks, heirs or prior sales of the property should be acquired.

These are some of the legal inspections that must be reviewed on the property prior to its acquisition.

The acquisition process is accomplished over a long period of time. Some local governments have planned their acquisition activities years before an actual acquisition occurs. Although speed and necessity are sometimes vital for a condemning authority, proper procedures should be in place and followed prior to any acquisition by purchase or condemnation.

A. Offers to Purchase

After the due diligence has been completed on a targeted property, negotiations with the property owner can begin. Generally, most successful pre-suit purchases occur when an

experienced land acquisition agent is able to sit down and discuss the purchase face to face with the owner. An experienced real property agent will be able to determine the seller's position regarding a voluntary sale of the property and can make a good determination if further meetings and discussions will be fruitful. Oftentimes, the real property agent can point out the advantages of a sale on the property to a condemning authority (including the advantage under the IRS code for properties under threat of condemnation) and can explain that large pieces of property are often difficult to sell unless a buyer has the financial resources to complete the purchase in a timely fashion.

The property agent should always be straightforward and honest with the seller to avoid any appearance of impropriety should the case go to suit. By keeping a line of communication open with the seller, oftentimes, a property will close shortly after suit is filed. Many condemning authorities have offered to pay for the sellers' appraisal of their property so the seller can make an independent determination as to the validity and valuation of the appraisals made by the condemning authority. The only prerequisite is that the appraiser carry an MAI designation.

This is just one of the means by which a good real estate agent can work with the property owner to strike a mutually acceptable price for the property. Based on the investigation undertaken by the purchaser, the real estate agent will often be able to point out any deficiencies or enhancements in the property. This knowledge of the property is often invaluable in being able to strike a deal with the seller.

II. PRESUIT INFORMATION PACKAGE

Once the negotiations have gone as far as they can, without a contract for the sale of the property, the parcel must begin the process of being placed into litigation. This begins with the presuit package. All the information gathered in the due diligence investigation, and utilized by the real property agent in his negotiations for the property, must be gathered and organized for use by the attorneys.

The attorney handling the condemnation will review the presuit information package and will update various aspects of the package such as the appraisals, the chain of title, the interested party list and any encumbrances the property is "subject to." The attorney will contact the condemning authority and will go over the time-table for the project and will meet with the authority's project team and/or its independent experts to assess the condemnation of the parcel.

All parties with an interest in the proceedings from the property owner, to tenants, judgment holders, easement holders and any party with an interest in the land will be named in the lawsuit. After the attorney has reviewed the presuit package, inspected the site, met with the experts and determined the authority's time table, the case is now ready to go through the condemnation process.

III. THE CONDEMNATION PROCESS

The condemnation process involves a number of steps. First, presuit negotiations are complied with, then a determination is made to file the suit as a quick take or a slow take. Next a suit package must be put together and filed with the court. Preparation for the order of taking will be the next prerequisite. After the order of taking, more investigation of the case through discovery will occur and finally a trial of the matter.

A. Presuit Negotiation

The Florida statutes, section 73.015, requires presuit negotiations before an eminent domain proceeding can be brought. The condemning authority must attempt to negotiate in good faith with the fee owner of the parcel to be acquired, must provide the fee owner with a written offer and, if requested, a copy of the appraisal upon which the offer is based. Additionally, the fee owners must be notified of their statutory rights under section 73.091 and 73.092 regarding attorneys fees and costs for the litigation. The condemning authority must make a written offer of compensation to the fee owner of the property to be acquired and the fee owner must be given 30 days to review the offer before a condemnation suit can be filed.

1. Business damages

During the presuit negotiation phase of the taking the condemning authority must notify all business owners, including lessees, who operate a business located on the property to be acquired. The business owner must be notified of their statutory rights the same as the property owner. If the business has been in operation for at least four (4) years then the business has the right to make a business damage claim. The business owner must, within 180 days after receipt of the required notice, submit to the condemning authority a good faith written offer to settle any claims of business damage. The condemning authority must respond to this offer within 120 days by accepting it, rejecting it or making a counter offer. If no settlement can be reached the business damage claim will proceed to trial in the same manner as the property claim.

B. Quick Takings v. Slow Takings

Before a condemnation suit is filed a determination must be made by the condemning authority, with the help and advice of their attorney, whether the condemnation suit should be a quick take or a slow take.

1. Slow Take.

A slow take condemnation suit is a lawsuit where the actual title to the property will not transfer to the condemning authority until a jury trial has occurred and a final judgment is entered. At this point the condemning authority has the option of determining if the final judgment amount is a fair and reasonable one and if the

amount meets their budget. If the condemning authority determines that the final judgment is adequate then, upon their deposit into the court registry of the amount returned by the jury, title to the property will transfer to the condemning authority.

If the condemning authority determines that the jury verdict is excessive, or is outside of their budget for the project, no funds are deposited into the court registry pursuant to the jury verdict. Title will not pass to the condemning authority. However, fees and costs incurred in defending the suit must be paid to the opposing party and their expert witnesses, which can be substantial.

A slow take is utilized when a clear determination of the valuation of the project cannot be accurately made or when the value of a taking could exceed the condemning authority's budget for the project. After a verdict is returned, the condemning authority has the option of accepting the verdict and depositing the money thereby taking title to the property or walking away, not depositing the money, not taking title to the property and only being responsible for the fees and costs incurred by the opposing party.

2. Quick Take

A quick take condemnation suit is a lawsuit where actual title to the property will pass prior to a jury verdict and a final judgment of the matter. The quick take procedure is the most common type of taking. A quick take allows the condemning authority to acquire title to the property within 60 to 90 days of filing suit and in advance of final judgment. Its utilization allows the condemning authority more flexibility in planning projects and not being dependent on the court's lengthy trial schedule before the title to property can be acquired and the project can move forward.

A quick taking is generally initiated at the beginning of the lawsuit (although it can be initiated at a later point) by filing a declaration of taking with the petition and summons which states the good-faith estimate of value of the property. A hearing date for the order of taking is included in the summons issued to the defendants with any interest in the property being acquired. The order of taking hearing is generally set approximately 45 to 60 days after the filing, to allow the defending parties to answer the petition and prepare for their defense.

The order of taking hearing consists of only two issues: 1. Is there a public purpose and necessity for the property and 2. Is the estimate of value made in good faith based on a valid appraisal? As to public purpose and necessity the condemning authority must only prove a reasonable necessity not an absolute necessity and that other alternatives were considered along with environmental, safety and cost issues. The condemning authority does not have to prove an immediate need for the property or detailed and complete plans and

specifications. To defeat an order of taking the property owner must prove there was a gross abuse of discretion, fraud, bad faith or an illegal purpose.

EXAMPLE: Use of a slow take v. a quick take

A county wishes to acquire a power plant. The valuation of the plant is difficult and initial estimates peg the value at approximately 25 million dollars. However, some estimates for the power plant run well over 100 million dollars. The county does not have sufficient funds if a verdict is returned for over 100 million dollars. If a quick take is used and the property is acquired prior to final judgment then the county would be required to pay whatever amount the jury returned. If the jury returned a verdict of 125 million dollars the county would be obligated to pay this amount, despite the fact that the county does not have this amount of money in their budget. Once an order of taking is entered and the title has transferred the condemning authority is obligated to pay whatever amount the jury returns. If this were instead a slow take, no order of taking hearing would be held (thus title has not transferred in a slow take until after the funds are deposited after the jury verdict) and if the jury amount was greater than anticipated the condemning authority could avoid the outcome by simply not depositing the funds in the court registry and paying only the costs and attorneys fees for the suit.

C. The Experts

A team of experts needed for the case should be assembled. These can range from appraisers, land planners, civil engineers, traffic engineers, environmental engineers, biologists, arborists, general contractors, marketing experts and accountants. Although some of the experts may already be assembled, as more details of the case are learned in discovery, additional experts may be needed to investigate and offer an expert opinion. Most experts used in eminent domain cases have extensive background in condemnation matters.

D. The Discovery

After the initial filing and the order of taking is completed, additional discovery will commence. Appraisals will be updated, and each sides' case will be reviewed by the opposing side. Depositions of all the experts will be taken and a firm grasp of the other sides' case will emerge. Generally, the discovery stage of the proceedings can be very costly as a large expenditure of attorney time and expert time is taken up in discovery depositions. Additionally, the review and response to production requests for various documents and interrogatory responses can also be time consuming.

If a business damage claim is made, an expert accountant will be hired to thoroughly review the business records and business damage report. Business damages are awarded only when part of the property on which the business is located is taken. If all of the property is taken (and hence all of the business is taken) business damages are not

available. Under the current statutes a business must have been in operation for at least four (4) years prior to the condemnation of the property to be eligible for business damages. If all of the business is taken, or if the business is not eligible for business damages, the business may be entitled to relocation expenses.

E. Mediation

After discovery, but prior to the trial of the matter, the court will order mediation. At mediation both sides present their case to a mediator who will mediate the session. Both sides need to have representatives at the mediation who have the authority to settle the matter. In the case of a condemning authority, the ultimate decision of the mediation is still controlled by a vote of the governing board or commission as to the approval of the settlement amount. However, the representative for the governing board or commission should have authority to represent the board or commissions' wishes, as rejection of mediation settlements can result in difficult resolutions of other condemnation cases.

Mediation can be a successful tool in resolving eminent domain matters. Both sides have the opportunity to discover the strengths and weaknesses of their case and their opponent's case. Settlement at mediation can save the condemning authority the costs of trial preparation and trial of the matter and offers a degree of certainty and finality. If mediation is unsuccessful, the case will generally proceed to trial.

F. The Trial

After the majority of discovery has been completed, either party will notice the case for trial. The judge will issue a pretrial order and will set the case on the earliest available docket. Most judge's dockets are running from 4 to 6 months after the case is noticed for trial. Pursuant to the Florida Statutes, an eminent domain case should take precedence over other cases on the court's trial docket.

A general overview of the trial consists of a motions in limine (pretrial motions) before the court, jury selection, opening statement, presentation of each side's case (with the opposing party cross examining the witnesses), then closing arguments and jury deliberations.

Because an eminent domain trial can be highly technical, and the majority of witnesses are expert witnesses, every effort is made to simplify, to the extent possible, the case. However, most jurors tend to gravitate toward the belief and credibility of each party's witnesses and their verdicts oftentimes point to the side whose experts and presentation were understandable, believable and credible. When a jury is evenly split between both parties cases, it is not uncommon to see the jury return a verdict which is in the middle of both sides valuations.

IV. FEES AND COSTS

A concern for both the condemning authority and for the property owner are the fees and costs associated with a condemnation case. By Florida Statute, the condemning authority is responsible for the fees and costs of the property owner. These fees include all fees reasonably incurred by expert witnesses throughout the course of the case, except where the condemning authority successfully uses an offer of judgment.

A. Expert Fees

The expert's fees are on an hourly basis and a determination is made at the end of the case as to the reasonableness of the amount of hours and the rate per hour for the expert. This is typically done in a fees and costs hearing before the judge.

Typical experts fees will include fees for an appraiser, land planner and engineer. Depending on the parcel of land being taken, more experts may be needed to complete the case. The length and difficulty of the case fuels the expenses incurred by the condemning authority. The condemning authority's costs arise initially from the investigation and due diligence on the parcel. However, costs spent at the early stage of the project are always well spent moneys as poor properties with unforeseen problems can be eliminated from the acquisition process early, thus saving additional time and expenses.

Substantial costs for both the condemning authority and the property owner can come before the order of taking hearing, during the investigation stages and hearing itself. Next, during the discovery stage expenses are incurred further investigating the parcel and the other side's case. Finally, near the trial stage expense are incurred in developing final reports and strategies, preparation of expert exhibits and depositions. At the trial of the matter costs are solely associated with the preparation and presentation at trial.

B. Attorneys Fees

Attorney fees for the property owner's attorney are determined by the benefit received by the property owner over and above the first written offer to the property owner. The benefit schedule for attorneys fees is as follows: 33 percent of any benefit up to \$250,000, plus 25 percent of any portion of the benefit between \$250,000 and \$1 million; plus 20 percent of any portion of the benefit exceeding \$1 million. In addition to the payment of fees based on the benefit achieved for the client, the property owner's attorney can receive hourly fees for defeating an order of taking, an apportionment, or other supplemental proceedings that are not otherwise provided for.

The condemning authority is also responsible for appellate fees in most circumstances when an appeal is taken except an appeal taken by the property owner in which the lower court is affirmed.

C. Offer of Judgment

The Florida Statutes allows for an offer of judgment in an eminent domain case. An offer of judgment allows for an early disposition of the case by making an offer of money in a set amount for the property and any and all damages to the property or business and which is exclusive of attorneys fees and costs. An offer of judgment can be made by the condemning authority to the property owner no sooner than 120 days after the defendant has filed an answer and no later than 20 days prior to trial.

If a property owner does not accept the offer of judgment made by the condemning authority within 30 days after it is made it is deemed rejected. If a judgment is returned against the property owner for an amount which is equal to or less than the offer of judgment then the court cannot award any costs incurred by the property owner after the date the offer of judgment was rejected.

When used correctly the offer of judgment has advantages and disadvantages. It allows for an early disposition of the case by putting the property owner at risk for the expert costs should the property owner not get a greater judgment at the trial of the matter than what was offered in the offer of judgment. The disadvantage is that the property owner often gauges his settlement amount based on the offer of judgment, even if it has expired. However, overall, an offer of judgment should be considered in every case to lower the overall costs to the condemning authority should a trial of the matter go forward and the condemning authority prevails.