

Business Operations  
Ofelia San Pedro, Deputy Superintendent

**SUBJECT:            PROPOSED SETTLEMENT WITH CLIVE USTON AND ELLEN GOLDMAN, TRUSTEES, PERTAINING TO THE DISTRICT'S ACQUISITION OF APPROXIMATELY .57 ACRES AS PART OF AN ASSEMBLAGE OF PROPERTIES TO SITUATE STATE SCHOOL "D", RELIEF FOR VIRGINIA BOONE HIGHLAND OAKS AND MADIE IVES ELEMENTARY AND HIGHLAND OAKS MIDDLE SCHOOLS, IN CONNECTION WITH THE EMINENT DOMAIN PROCEEDINGS OF THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA v. AVENTURA BELLAGIO, LLC, CASE NO. 04-11406-CA (08)**

**COMMITTEE:        FACILITIES AND CONSTRUCTION REFORM**

**Introduction**

In September and October 2003, the School Board (Board) approved the purchase of two parcels of land totaling approximately 2.3 acres as part of an assemblage of six properties to situate State School "D"; this school is proposed as a K-8 facility in FY 2005-06 of the Five Year Capital Plan to relieve the overcrowded Virginia Boone Highland Oaks Elementary, Madie Ives Elementary and Highland Oaks Middle Schools.

After exhausting all attempts to negotiate a willing sale with the remaining property owners, the Board, at its January 14, 2004 meeting, authorized the filing of a Petition in Eminent Domain to acquire an additional 7.5 acres consisting of four separate properties, located between NE 209 Street and NE 211 Terrace & between West Dixie Highway and NE 26 Avenue, Miami, Florida (see attached location map). The lawsuit to acquire the four additional properties was filed on May 21, 2004, culminating in the execution of a "Stipulated Order of Taking" (Stipulated Order) in favor of the Board on August 3, 2004. Title to these properties and all improvements contained thereon was subsequently transferred to the Board on August 30, 2004, upon deposit of the District's good-faith funds of \$3,936,000. Pursuant to state law, the final value to be paid to the property owners is to be determined through mediation or by a jury trial. The Condemnation proceedings are pending in the Circuit Court, in and for Miami-Dade County. Tom Bolf, Esquire, of the Law Firm of Ruden McClosky is representing the Board in the condemnation action. The Board is required by Florida law in Eminent Domain proceedings to pay the owner's reasonable costs and attorney's fees.

**Background**

In accordance with state law, as referenced above, three mediation sessions to discuss settlement terms were held between District staff and the property owners of a .57-acre parcel, located at 21060 West Dixie Highway, Miami, Florida (labeled as Parcel "C" on the attached location map). The Site contains an improved building approximately 5,000 square feet in size, which had been leased by the previous owners to Corporation

(Tenant) to operate a Montessori School serving approximately 100 students in grades Kindergarten through Second grade. As a result of the above referenced discussions, the property owners have tentatively agreed to accept a settlement payment of \$1,180,000, inclusive of all related damages, costs, and attorney fees.

In addition to the proposed settlement with the property owners, the District is also responsible for the Tenant's loss of its trade fixtures, furniture and equipment (FF&E), as well as the Tenant's attorney fees. As such, and as part of this settlement, the Tenant and their attorney have agreed to accept \$30,000 in full satisfaction of the FF&E claim and \$5,000 as compensation to the Tenant's attorney. As such, the total cost to the District for this proposed settlement would be \$1,215,000.

As a condition of the Stipulated Order, the District has agreed to allow the Tenant to continue operation of the Montessori School for a period not to exceed 16 months from the date of the Stipulated Order (December 29, 2005). In accordance with the Stipulated Order, the Tenant is required to indemnify and hold the District harmless from all liability which may arise during its use of the facility. Moreover, the Tenant is required and has provided proof of liability insurance in the amount of \$1,000,000 for the property, naming the Board as an additional insured. The time of extended possession will enable the owner to complete the planned construction and relocation of the Montessori School and is not expected to interfere with the District's planning, design and construction of State School "D". Upon expiration of the 16 month period, the building will most likely be demolished in order to accommodate construction of State School "D".

Although the Stipulated Order incorporates provisions to protect the District during the operation of the Montessori School, execution of a lease agreement between the District and the Tenant is necessary to formalize each parties' responsibilities and obligations relative to the facility itself. As such, a lease agreement between the District and Tenant will be executed upon Board approval to include, substantially, the following terms and conditions:

- the term of the lease shall be for 16 months from the date of the Stipulated Order, August 30, 2004, and shall terminate no later than December 29, 2005;
- the rental rate will be \$7,627 per month (\$122,032 for 16 months). This rental rate is the same as the Tenant was paying prior to the Board's acquisition of the property;
- other than due to damage or destruction of the facility, or in the event the Tenant abandons the demised area, the District may only cancel the lease agreement in the event of default on the part of the Tenant. The Tenant may cancel the lease at any time;
- the Tenant will be responsible for all utilities, maintenance and repair of the facility and all equipment contained therein. In addition, the Tenant will be responsible for all maintenance and repair of the demised area, including the parking lot and all equipment and components located thereon;

- in the event all or significant portions of the facility should be destroyed or so damaged by fire, windstorm or other casualty to the extent that the facility is rendered untenable or unfit for the operation of the school, the Tenant will have the choice of repairing the facility at its sole cost or canceling the lease agreement. If the Tenant fails to make the required repairs within 90 days from the date of damage or destruction, the District shall have the right to immediately terminate the lease agreement. In addition, if the demised area is abandoned or vacated by the Tenant and no longer used for school purposes, the District shall have the right to immediately terminate the lease agreement and have exclusive dominion over the property;
- the Tenant shall indemnify and hold the Board harmless from all liability which may arise as a result of the Tenant's negligence, actions or failure to act under the terms of the lease agreement; and
- the Superintendent of Schools shall be the party designated by the Board to grant or deny all approvals which may be required by the lease agreement, or to cancel the lease agreement.

It is important to note that final disposition of the other two properties not covered by this settlement (Parcels "B" and "D" on the attached location map) will be determined either through a mediated settlement currently underway or by jury trial yet to be scheduled if mediation is unsuccessful. The Board, at its meeting of January 19, 2005, approved a mediated settlement for Parcel "F".

#### **Proposed settlement**

The proposed settlement is subject to Board approval. This settlement is recommended as advantageous to the Board, considering the risk of trial, the cost for expert fees and attorneys fees for the School Board and the Defendant, should the case be tried.

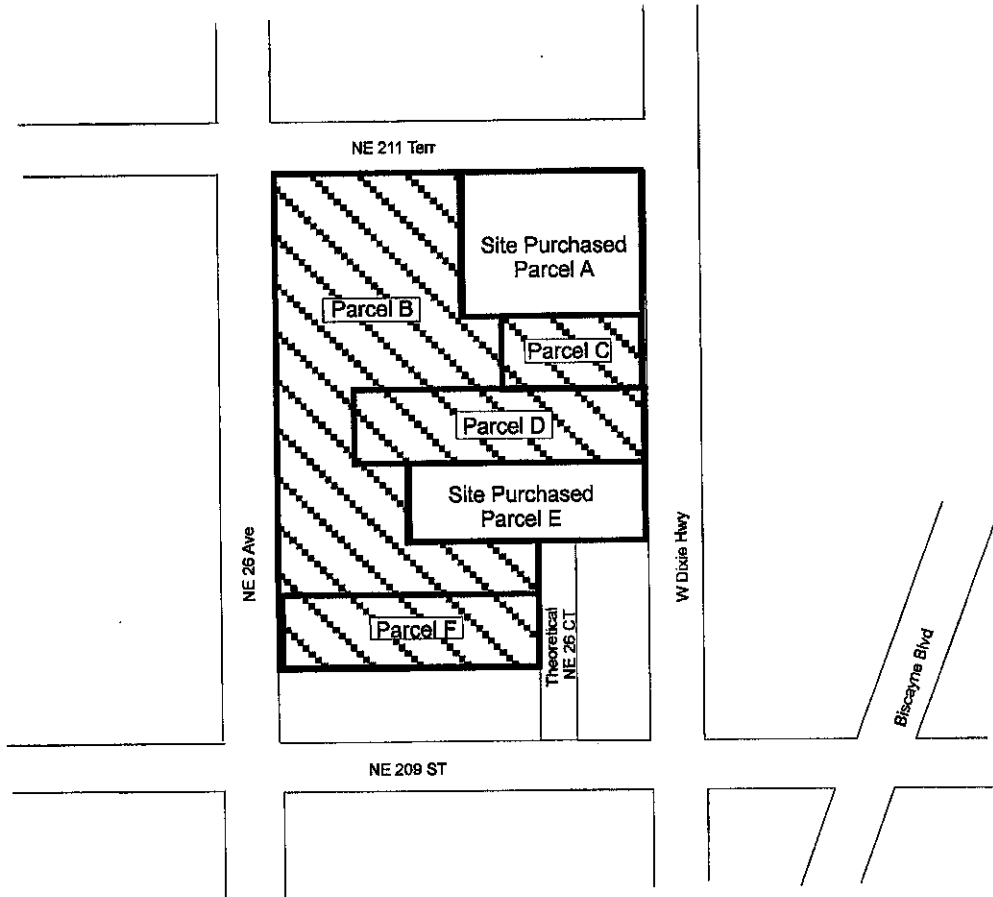
The School Board Attorney's Office will submit to the Board Members and the Superintendent, as confidential supplemental information, a memorandum from Eminent Domain Counsel explaining the reasons as to why the \$1,215,000 settlement is advisable and recommending that it be accepted.

**RECOMMENDED:**



That The School Board of Miami-Dade County, Florida:

- 1) approve and authorize settlement with Clive Uston and Ellen Goldman, Trustees, pertaining to the District's acquisition of approximately .57 acres, as part of an assemblage of properties to situate State School "D", Relief for Virginia Boone Highland Oaks and Madie Ives Elementary and Highland Oaks Middle Schools, in connection with the Eminent Domain proceedings of the School Board of Miami-Dade County, Florida v. Aventura Bellagio, LLC, Case No. 04-11406-CA (08), by payment of \$1,180,000 to the property owners, inclusive of all attorney's fees and costs, and \$35,000 to FAMZ Corporation, inclusive of all attorney's fees and costs, for a total settlement cost of \$1,215,000, as described above; and
- 2) authorize the Superintendent or his designee to execute a lease agreement with FAMZ Corporation to allow the continued operation of the Montessori School, located at 21060 West Dixie Highway, Miami, Florida, for the period of August 30, 2004 to December 29, 2005, at a total rental rate of \$122,032, and in substantial conformance with the above terms and conditions.

# LOCATION MAP



## LEGEND

	<p>PORTION OF ASSEMBLAGE PREVIOUSLY PURCHASED BY THE BOARD (PARCELS A &amp; E) ± 2.29 ACRES VACANT LAND</p>
	<p>FOUR PROPERTIES ACQUIRED BY EMINENT DOMAIN ± 7.5 ACRES (PARCELS B,C,D,&amp; F)</p>
<p>TOTAL ASSEMBLAGE ± 9.8 ACRES</p>	

