

Office of School Facilities  
Rose Diamond, Chief Facilities Officer

**SUBJECT:            PROPOSED SETTLEMENT AND AUTHORIZATION FOR THE SUPERINTENDENT TO EXECUTE A LEASE AGREEMENT WITH CROATIAN-AMERICAN SOCIAL CLUB, PERTAINING TO THE DISTRICT'S ACQUISITION OF APPROXIMATELY .87 ACRES AS PART OF AN ASSEMBLAGE OF PROPERTIES TO SITUATE STATE SCHOOL "D" TO RELIEVE VIRGINIA A. BOONE/HIGHLAND OAKS ELEMENTARY SCHOOL, MADIE IVES ELEMENTARY SCHOOL AND HIGHLAND OAKS MIDDLE SCHOOL, 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 greatly 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 four remaining property owners, the Board, at its January 14, 2004 meeting, authorized the filing of a Petition in Eminent Domain to acquire the four remaining properties, consisting of an approximate total of 7.5 acres, 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 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 attorney's fees and costs, including loss of trade fixtures, furniture and equipment (FF&E).

## **Background**

In accordance with state law, as referenced above, two mediation sessions to discuss settlement terms were held between District staff and the property owners of a .87-acre parcel, located at 21038 West Dixie Highway, Miami, Florida (labeled as Parcel "D" on the attached location map). The Site contains an improved building approximately 5,000 square feet in size, which has been utilized as a social club. As a result of the above referenced discussions, the property owners have tentatively agreed to accept a settlement payment of \$1,327,500, inclusive of all related damages, costs, and attorney fees.

Further, as a condition of the Stipulated Order, the District has permitted the former owners to remain on the premises as a Tenant and continue operation of the social club rent free, for a period not to exceed 16 months from the date of the Stipulated Order (December 29, 2005). This additional time will enable the Tenant to locate and construct a replacement facility and is not expected to interfere with the District's planning, design and construction of State School "D". 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 has provided proof of liability insurance in the amount of \$1,000,000 for the property, naming the Board as an additional insured. 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 Tenant's possession and continued operation of the social club, execution of a lease agreement between the District and the Tenant is necessary to formalize each party's 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 Tenant will have use and possession of the property rent free for the 16 month period;
- 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 social club, 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 social club 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 last property not covered by this settlement (Parcel "B" 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 meetings of January 19, 2005, and March 16, 2005, approved mediated settlements for Parcels "F" and "C" respectively.

### **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 attorney's 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 \$1,327,500 settlement is advisable and recommending that it be accepted.

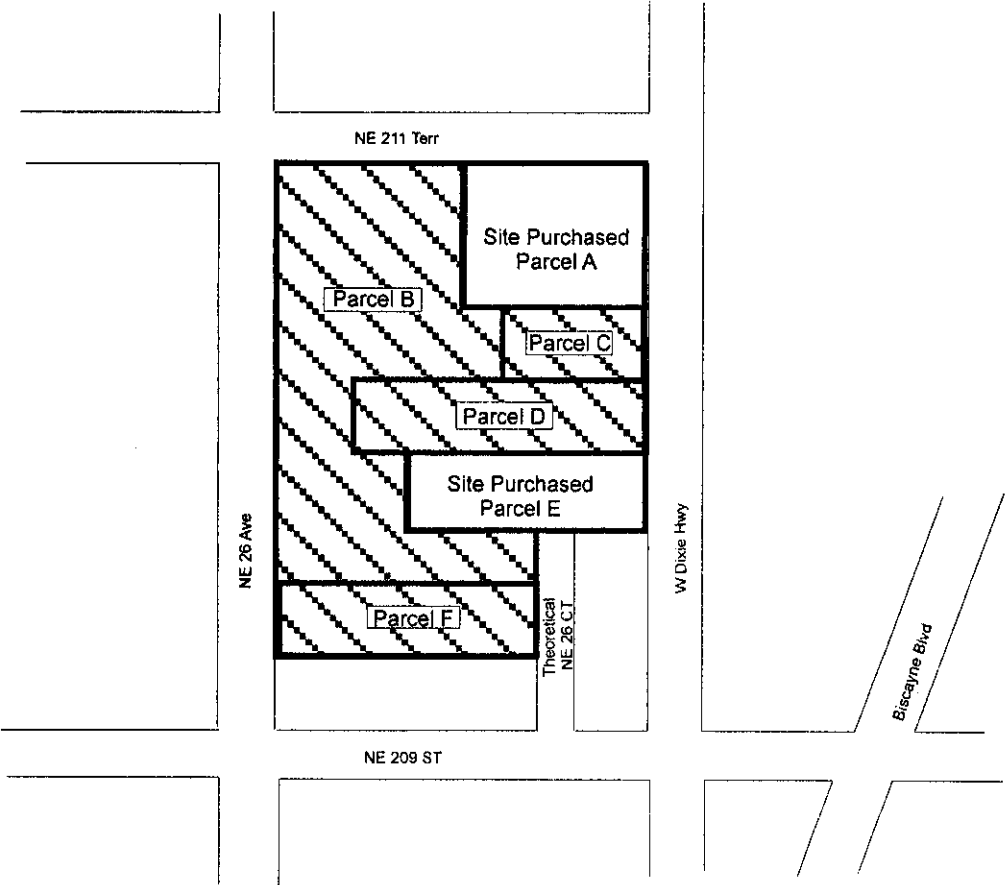
**RECOMMENDED:**

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



- 1) approve and authorize settlement with the Croatian American Social Club, pertaining to the District's acquisition of approximately .87 acres, as part of an assemblage of properties to situate State School "D" to relieve Virginia A. Boone/Highland Oaks Elementary School, Madie Ives Elementary School and Highland Oaks Middle School, 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 \$1,327,500 to the property owners, inclusive of all attorney's fees and costs, as described above; and
- 2) authorize the Superintendent or his designee to execute a lease agreement with the Croatian-American Social Club to allow for their continued possession and operation of the social club, located at 21038 West Dixie Highway, Miami, Florida, rent free, for the period of August 30, 2004 to December 29, 2005, substantially in conformance with the above terms and conditions.

JB:rr

# LOCATION MAP



## LEGEND

	PORTION OF ASSEMBLAGE PREVIOUSLY PURCHASED BY THE BOARD (PARCELS A & E) $\pm$ 2.29 ACRES VACANT LAND
	FOUR PROPERTIES ACQUIRED BY EMINENT DOMAIN $\pm$ 7.5 ACRES (PARCELS B, C, D, & F)
TOTAL ASSEMBLAGE $\pm$ 9.8 ACRES	

