

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

**SUBJECT: ADOPT RESOLUTION NO. 04-41 AUTHORIZING THE
COMMENCEMENT OF FRIENDLY EMINENT DOMAIN
PROCEEDINGS TO ACQUIRE A ± 6.6-ACRE SITE LOCATED AT
WEST 18 AVENUE AND WEST 41 STREET, HIALEAH,
FLORIDA, FOR STATE SCHOOL "WWW" (MIAMI SPRINGS
SENIOR HIGH SCHOOL RELIEF)**

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COMMITTEE: FACILITIES MANAGEMENT

Background

Certificates of Participation (COPS) were issued by the District in October 2001 in the amount of \$25,000,000 to fund the construction of an addition (State School "WWW") at Miami Springs Senior High School (Miami Springs Senior) to accommodate approximately 1,500 student stations. Subsequent to the issuance of COPS, the District began the planning process to construct the addition at Miami Springs Senior. At that time, concerns were raised by elected representatives and residents of the City of Miami Springs (City) relative to traffic congestion caused in large part by the number of students living outside the City who attend Miami Springs Senior. As a result, an outside consultant was commissioned in August 2002, to rank possible alternate properties located within close proximity to Miami Springs Senior to house State School "WWW". State School "WWW" is planned to provide relief for Miami Springs Senior High School, which is currently operating on double shifts at a permanent F.I.S.H. capacity of 132%. The recommendations set forth in the above referenced study are ranked as follows:

- First Preference – Construct the School on Board-owned land located adjacent to Miami Springs Middle school, currently utilized by ACCESS Center 3, and include additional build-out to accommodate administrative space for the continued operation of ACCESS Center 3;
- Second Preference – Construct the School on Board-owned land currently leased to the City for use as a City park;
- Third Preference – Construct the addition on the Miami Springs Senior Campus;
- Fourth Preference – Convert an Office Building located in the City of Virginia Gardens, Florida; and
- Fifth Preference – Convert an industrial property located in unincorporated Miami-Dade County, Florida, previously used as a milk processing factory.

The study's recommendations were presented to the City of Miami Springs' Educational Advisory Board (EAB) for review and comment. The EAB issued its position in the form of a resolution, which stated that since the majority of students attending Miami Springs Senior live in the southern portion of the City of Hialeah (Hialeah), a relief school would be best located in that general area or within the feeder pattern of Miami Springs Senior. It should be noted that District Staff has subsequently substantiated in a demographic study that approximately 65% of students attending Miami Springs Senior live in the southern portion of Hialeah. Consequently, staff began a broader search to identify suitable sites in the Hialeah area, which culminated in the identification of several possible properties. These included: a portion of the Hialeah Horse Track; the Hialeah Speedway; the campus of J.W. Johnson Elementary School; and 6.6 acres of vacant land located at West 41 Street and West 18 Avenue, Hialeah, Florida (see location map). The first three properties were eliminated as possible host sites for the following reasons:

- Hialeah indicated it would not be feasible to convey any interest in the Horse Track, located at East 32 Street and Palm Avenue, Hialeah, Florida, to the District for educational purposes, due to existing commitments.
- The Hialeah Speedway, situated on approximately 30 acres and located at West 37 Street and West 16 Avenue, Hialeah, Florida, is being planned for commercial development and is not available for purchase other than through eminent domain.
- A proposed plan to transfer approximately 139 students attending J.W. Johnson Elementary School (Johnson), located at 735 West 23 Street, Hialeah, to James H. Bright Elementary School, and utilize the Johnson site to situate State School "WWW", was opposed by Hialeah officials and residents surrounding the Johnson campus, due to traffic concerns and the fact that Johnson has served the immediate residential community as a kindergarten through second grade (K-2) facility since it was first built in 1961. Neighborhood residents strongly objected to the relocation of this small neighborhood school, and replacement with a much more intensive senior high school facility.

Additional Information

In December 2003, staff confirmed that the 6.6-acre site (Subject Site) was available for purchase. Staff subsequently began to conduct due diligence to determine the site's suitability to accommodate State School "WWW". As a result, and in accordance with School Board Rule 6Gx13- 2C-1.083, staff presented informational packets consisting of due diligence results to the School Site Planning and Construction Committee (SSPCC), at its February 4, 2004, April 7, 2004 and May 5, 2004 meetings, for review and direction. Several important issues relative to site size, location, and traffic congestion were considered by the SSPCC:

1. Limitations of placing a senior high school on a 6.6-acre campus

Based on a preliminary conceptual study conducted by the District's Advanced Planning Department, a compact educational facility housing 1,500 student stations could be constructed on the Subject Site. However, inclusion of an auditorium, full gymnasium and various sports fields such as football and baseball may not be feasible. As such, certain sport activities and other comparable uses may have to be conducted on other local District and non-District properties.

2. The Subject Site's proximity to an indoor gun range

The SSPCC was advised of the existence of an operating indoor gun range (range) located approximately 2 blocks from the Subject Site. The range is not visible from the Subject Site and is completely enclosed in a small shopping center. The Department of School Police visited the range and advised that the indoor range is positioned such that firing of weapons occurs in the opposite direction of the Subject Site.

3. Traffic Congestion

The SSPCC discussed the level of traffic in the area surrounding the Subject Site and whether the existing roads are capable of handling the additional traffic a high school would generate. Staff advised the SSPCC that the Subject Site is within close proximity to the Palmetto Expressway and Okeechobee Road and, as such, ingress and egress should not pose a problem. In addition, the Subject Site is bounded by paved streets on three sides, one of which would require expansion to meet the transportation needs of the school. The cost to expand this road, as established in an independent development study commissioned by the District, is estimated at \$148,061.

Additionally, Hialeah has indicated that acquisition of the subject site for placement of an educational facility is in conformity with Hialeah's Comprehensive Development Master Plan. As of the date of this writing, the development of the Subject Site does not meet traffic concurrency requirements; however, Hialeah received approval to amend its land use plan to expand the Traffic Area Zones from the Department of Community Affairs (DCA) on May 24, 2004, which should become final June 14, 2004, upon expiration of the 21-day appeal period.

4. Recorded Deed Restrictions

Recorded Deed Restrictions affecting the use of the Subject Site are held by adjacent property owners – Best Buy, Inc., and Bally's Sports Fitness Center, both of which have advised of their unwillingness to issue a release to the District from said restrictions. Consequently, acquisition of the Subject Site through friendly eminent domain proceedings is necessary to dissolve these restrictions. These entities may make a claim for damages, which would be in addition to the agreed upon compensation with the owner, but the District's outside eminent domain counsel has opined that such a claim would be of minimal risk, as it is contrary to existing Florida Supreme Court case law. It is important to note that the Seller has agreed to convey the property to the District through friendly eminent domain.

Given the scarcity of land available for purchase in the greater Hialeah area, and the limited options available to site the much needed relief for Miami Springs Senior, the SSPCC determined that although the Subject Site may not be an ideal site for a traditional senior high school, it is suitable to house a small senior high which would be located in the same geographical area from which a majority of students attending Miami Springs Senior originate. Based on the above, in conjunction with input from ACCESS Center 3, the Department of Transportation, and the Office of ACCESS CENTERS, the SSPCC recommended that staff submit an Agenda Item to the School Board (Board) seeking authorization to initiate friendly eminent domain proceedings to acquire the Subject Site at a purchase price of \$5,755,000 to situate State School "WWW". It should be noted that because the Subject is intended to provide relief to a school located in ACCESS Center 3, yet falls within ACCESS Center 1 boundaries, the SSPCC's recommendations were coordinated with ACCESS Center 1 staff.

Pursuant to the SSPCC's recommendations, a purchase and sale agreement will be negotiated to include the following terms and conditions:

- The purchase price shall be \$5,755,000 for the +6.6-acre site, in an "As Is" condition. This purchase price is approximately 9% above the high end of appraised value and 14% above the low end of appraised value as established by the reviewing appraiser;
- Satisfactory completion by the District of a Phase II environmental assessment;
- The Seller shall be responsible for the payment of any and all outstanding taxes, special assessments or liens, if any;
- The Subject Site is to be purchased in "As Is" condition;
- The Board shall pay a per diem cost of \$188 for every day that Closing extends past July 11, 2004, as a fee for extending the Closing date. A Closing that extends past August 13, 2004, will require Seller consent;
- The Board will be responsible for the cost of the Survey, Title Insurance Commitment and premium for the Title policy obtained by the Board for issuance of the Commitment and all of the Seller's Attorney's fees associated with reviewing documents pertaining to the filing of the friendly eminent domain law suit. This expense is expected to be a nominal amount given the minimal amount of work associated with reviewing the court filing; and
- In the event environmental problems are discovered, the Board shall not be obligated to proceed with the purchase of the subject property.

Pursuant to the Board Rule governing Site Acquisitions, the Board must approve by extraordinary vote (a majority vote plus one additional vote of the Members present at the Board Meeting where such action is taken) the acquisition of property when the

purchase price exceeds the value established in the review appraisal. Moreover, Florida Statutes require that educational facilities be adequate in size to meet the educational needs of the Students to be served. Pursuant to s. 1013.36 Florida Statute, the Florida Department of Education recommends standard site sizes for educational plants. Exceptions to recommended site sizes are allowed, provided the Board, by a two-thirds majority, recommends the site and finds that it can provide an appropriate and equitable educational program on such site. State School "WWW" is proposed to accommodate approximately 1,500 student stations. The Subject Site is 18.4 acres under the size recommended by the Department of Education.

In addition to the \$25,000,000 in COPS funding previously noted, an additional \$5,000,000 was appropriated in the 2003-2004 fiscal year for State School "WWW" as part of the Five-Year Work Program. This additional funding, based on the prospective purchase price needs to be re-appropriated for site acquisition along with an additional \$1,000,000 to cover total acquisition costs (this increase includes all estimated closing and court costs pertaining to the filing of the friendly eminent domain action). The additional funding will require an amendment to the Five-Year Work Program and a transfer from Program 2801, Impact Fee Reserves, East Benefit District.

As referenced above, staff undertook and completed extensive due diligence for the subject site as required by the governing Board Rule. Listed below is the property location and corresponding due diligence results for the subject site.

Due Diligence Results for the Subject Site

Location: The subject site consists of +6.6 acres and is located at West 41 Street and West 18 Avenue, Hialeah, Florida. The subject site is comprised of vacant land and is zoned for commercial use.

Summary of Due Diligence Results: A copy of due diligence records will be submitted to the Board under separate cover 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 designation.
2. **Jurisdictional Statements:** Both the South Florida Water Management District (SFWMD) and the Department of Environmental Resources Management (DERM) have indicated that the subject site contains wetlands. SFWMD has indicated that approximately three acres contain wetlands, and established a preliminary wetlands mitigation ratio, ranging from 1.0 to 2.0 per affected acre, at a cost of \$19,802.67 per acre, and an application fee of \$5,000. Therefore, total mitigation costs are approximately \$125,000. The U.S. Army Corps of Engineers has not provided a statement. DERM's Water Control section has indicated that the subject site is not subject to water retention requirements.

3. Phase I Environmental Audit: The Audit indicated no evidence of on-site recognized environmental conditions in connection with the historic or current land use of the Subject Site. However, the consultant did recommend that trenching be undertaken to determine whether any materials have ever been improperly buried on the site. A copy of the Executive Summary of findings and conclusions of the Phase I will be included in the supplemental information to be submitted to the Board under separate cover, and a copy will be placed with Citizen's Information. The Phase II environmental assessment has been commissioned and it is anticipated that it will be distributed to the Board prior to the June 16, 2004 meeting.
4. Comprehensive Plan/Zoning compliance: Hialeah has indicated that acquisition of the subject site for placement of an educational facility is in conformity with Hialeah's Comprehensive Development Master Plan. However, the development of the Subject Site will not meet concurrency requirements until Hialeah receives approval to amend its land use plan to expand the Traffic Area Zones. Hialeah advised that a land use amendment to remedy this issue was approved by the Department of Community Affairs (DCA) on May 24, 2004, and should become final June 14, 2004, upon expiration of the 21 day appeal period. In addition, no new development can occur until the Lift Station serving the area is upgraded. Hialeah has advised that it is undertaking necessary steps to upgrade the Lift Station and supporting components. This work is scheduled to be completed by October 2006. Should a conflict arise between the District's construction schedule and upgrading of the Lift Station, the District could opt to make the necessary upgrades itself. The total cost to make these improvements is estimated at \$290,000.
5. Aviation: The Miami-Dade County Aviation Department has indicated that the Subject Site is located Outside the No-School Zone, and therefore compatible with airport operations of Miami International and Opa-locka Airports.

Legal Description of the Subject Site

The legal Description is attached hereto and labeled as Exhibit "A". The folio number is 04-3002-000-0050.

The owner of the subject site is Frank and Phyllis Bramson, Trustees.

A copy of the full record on this proposed acquisition will be submitted to the Board as supplemental information.

RECOMMENDED:

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


- 1) adopt Resolution No. 04-41, authorizing the commencement of friendly eminent domain proceedings to acquire from Frank and Phyllis Bramson, Trustees, a \pm 6.6-acre site located at West 41 Street and West 18 Avenue, Hialeah, Florida, at a purchase price of \$5,755,000, for placement of State School "WWW";
- 2) authorize the Superintendent or his designee to execute a purchase and sale agreement with Frank Bramson and Phyllis Bramson, Trustees, to acquire the \pm 6.6-acre site located at West 41 Street and West 18 Avenue, Hialeah, Florida, at a purchase price of \$5,755,000, for placement of State School "WWW";
- 3) approve the exception to the standard site size as enumerated above for proposed "State School "WWW"; and
- 4) authorize the superintendent to submit to the Commissioner of Education of the Florida Department of Education, the Board-approved site exception for State School "WWW".

And that The School Board of Miami-Dade County, Florida, approve by majority vote, authorization to amend the Five-Year Work Program to establish the site acquisition appropriation for this project by transferring \$5,000,000 from Object Code 5630, Construction, to Object Code 5660, Site Acquisition, and increase the Site Acquisition appropriation from \$5,000,000 to \$6,000,000 (to include closing and court costs associated with the filing of the friendly eminent domain action). The transfer of said additional funds is to be taken from Program 2801, Impact Fee Reserves, East Benefit District.

Location Map



Legend

 Subject Site
(6.6 Acres Of
Vacant Land)

Not To Scale



EXHIBIT "A"

LEGAL DESCRIPTION

A portion of the North $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 2, Township 53 South, Range 40 East, being more particularly described as follows:

Commence at the Northwest corner of the North $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 2; Thence run S89°58'47" E along the North line of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 2 for a distance of 804.19 feet to a point; Thence run S01°01'13"W for a distance of 35.00 feet to a point of intersection with the South Right-of-Way line of West 41st Street, said point also being the Point of Beginning of parcel of land hereinafter to be described; Thence run S89°58'47"E along the south right-of-way line of said West 41st Street for a distance of 432.25 feet to a point of curvature of a circular curve, concave to the Southwest, having for its elements a radius of 50 feet and a central angle 88°32'43"; Thence run Southeasterly along the arc of said circular curve for an arc distance of 77.27 feet to a point of tangency; Thence run S01°26'04"E. along a line that lies 35 feet West of and parallel with the East line of the S.W. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ of said Section 2, also being the Westerly right-of-way line of West 18th Avenue for a distance of 515.39 feet to a point of curvature of a circular curve, concave to the Northwest, and having for its elements a radius of 26 feet and a central angle of 91°27'39"; Thence run Southwesterly along the arc of said circular curve for an arc distance of 39.91 feet to a point of tangency; Thence run N89°58'25"W along a line that lies 35 feet North of and parallel with the South line of the North $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 2, also being the Northerly right-of-way line of West 39th Street for a distance of 470.33 feet to a point; Thence run N00°01'13"E for a distance of 589.54 feet to the Point of Beginning. Said described parcel of land lying and being situated in the City of Hialeah, Miami-Dade County, Florida.

RESOLUTION NO. 04-41

A RESOLUTION OF THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA ("BOARD"), DECLARING THE ACQUISITION OF THE REAL PROPERTY LEGALLY DESCRIBED ON EXHIBIT "A" HERETO IN FEE SIMPLE, AS NECESSARY FOR PUBLIC USE AND FOR THE BOARD PURPOSE OF PROVIDING SCHOOLS TO THE RESIDENTS OF MIAMI-DADE COUNTY, AND AUTHORIZING THE ACQUISITION OF SAID PROPERTY BY PURCHASE OR EMINENT DOMAIN; PROVIDING AN EFFECTIVE DATE

WHEREAS, the Board is responsible for providing schools to the residents of Miami-Dade County; and

WHEREAS, the Board's staff has recommended, based upon study and planning analysis, consideration of alternative sites, safety, costs, environmental factors, and long range area planning, that the property legally described on Exhibit "A" hereto be acquired in fee simple for a site for a school, which is a school purpose; and

WHEREAS, the Board's staff has recommended, based upon study and planning analysis, consideration of alternative sites, safety, costs, environmental factors, and long range area planning, that the property legally described on Exhibit "A" hereto provides the most appropriate location for school sites, which is a school purpose, to serve the residents of Miami-Dade County in this portion of the County; and

WHEREAS, the Board has determined that the Board's acquisition of the property legally described on Exhibit "A" hereto is necessary for the purpose of providing a needed site for schools, which is a school purpose, to serve the residents of Miami-Dade County in this portion of the County, and that the acquisition of said property is for a public use and public purpose and is in the best interests of the public welfare and the Board; and

WHEREAS, Chapters 73, 74 and 1013, Florida Statutes, empower the Board to acquire property through eminent domain when the acquisition of such property is necessary for any public school purpose or use; and

WHEREAS, the Board desires to authorize and approve the acquisition in fee simple of the property described on Exhibit "A" hereto by purchase or eminent domain, including, the use of the procedures for "quick takings".

NOW, THEREFORE, BE IT RESOLVED BY THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA:

SECTION 1. That the above recitals are true and ratified and adopted by this reference.

SECTION 2. That the School Board of Miami-Dade County hereby authorizes the acquisition by purchase or eminent domain of that certain real property more specifically described in the attached Exhibit "A", incorporated by this reference.

SECTION 3. That the Superintendent of Schools and the School Board Attorney or their designee are authorized and directed to survey said property and to employ one or more real estate appraisers for the purpose of securing one or more appraisals of value of the property described above for the purpose of acquiring said property, and to negotiate in good faith with the owner(s) of said property in an effort to acquire the property.

SECTION 4. That the Superintendent of Schools and the School Board Attorney or their designee are hereby authorized and directed to proceed to take all necessary steps for the Board to acquire in its own name in fee simple by purchase or eminent domain proceedings the real property described on Exhibit "A" hereto, and to prepare in the name of the Board all papers, pleadings and other instruments required for that purpose and to prosecute all eminent domain proceedings to judgment.

SECTION 5. That the Superintendent of Schools and the School Board Attorney or their designee are hereby authorized and directed to take such further actions as are reasonably required to fully accomplish the purposes herein directed.

SECTION 6. That this Resolution shall take effect immediately upon its passage.

ADOPTED this sixteenth day of June, A.D. 2004

THE SCHOOL BOARD OF MIAMI-DADE COUNTY,
FLORIDA

Chair

ATTEST:

Secretary

EXHIBIT "A"

LEGAL DESCRIPTION

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