

Office of School Facilities
Jaime G. Torrens, Chief Facilities Officer

- SUBJECT:**
- 1) **ADOPT RESOLUTION NO. 08-91, DESIGNATING THE SCHOOL BOARD-OWNED LAND LOCATED AT 13835 NW 97 AVENUE, HIALEAH, TO BE UNNECESSARY FOR EDUCATIONAL PURPOSES, SOLELY FOR THE EXPLICIT PURPOSE OF EXCHANGING THE PROPERTY FOR SIMILARLY SIZED PROPERTY LOCATED AT APPROXIMATELY NW 144 STREET AND NW 97 AVENUE; AND**

 - 2) **AUTHORIZE THE SUPERINTENDENT TO FINALIZE NEGOTIATIONS AND EXECUTE AN EXCHANGE AGREEMENT WITH SHOMA HOMES AT BELLAGIO, LLC, TO ACQUIRE AN APPROXIMATE 15-ACRE PARCEL OF LAND LOCATED AT APPROXIMATELY NW 144 STREET AND NW 97 AVENUE, HIALEAH, IN EXCHANGE FOR A 15-ACRE SCHOOL BOARD-OWNED SITE LOCATED AT 13835 NW 97 AVENUE, HIALEAH, TO SITUATE STATE SCHOOL "AA-2", A NEW K-8 CENTER PROPOSED TO RELIEVE HIALEAH GARDENS ELEMENTARY SCHOOL AND BOB GRAHAM EDUCATION K-8 CENTER, SUBSTANTIALLY IN CONFORMANCE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN; AND**

 - 3) **AUTHORIZE THE SUPERINTENDENT TO EXECUTE ANY OTHER DOCUMENTS NECESSARY TO EFFECTUATE THE EXCHANGE OF THE SUBJECT PROPERTIES; AND**

 - 4) **IN THE EVENT NEGOTIATIONS FOR THE EXCHANGE OF THE PROPERTIES ARE UNSUCCESSFUL, RESCIND RESOLUTION NO. 08-91, DESIGNATING THE SUBJECT SCHOOL BOARD-OWNED PARCEL AS BEING UNNECESSARY FOR EDUCATIONAL PURPOSES**

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

LINK TO

STRATEGIC PLAN: IMPROVE CONSTRUCTION SERVICES

Introduction

In accordance with School Board Rule 6Gx13- 2C-1.083, the School Site Planning and Construction Committee (SSPCC), at its June 4, 2008 meeting, recommended that an agenda item be brought to the Board requesting authorization to finalize negotiations

and execute an exchange agreement with Shoma Homes at Bellagio, LLC (Shoma), to acquire an approximate 15-acre parcel of land located at approximately NW 144 Street and NW 97 Avenue, Hialeah (Subject Site), in exchange for an approximate 15-acre Board-owned site located at 13835 NW 97 Avenue, Hialeah (Board Site), to situate State School "AA-2" (see location map). The SSPCC also recommended that the Board designate the Board Site to be unnecessary for educational purposes, solely for the explicit purpose of exchanging the Board Site for the Subject Site, which is proposed as the host site for State School "AA-2", a K-8 Center proposed to relieve Hialeah Gardens Elementary School and Bob Graham Education K-8 Center. Preliminary student enrollment for the 2008-2009 school year shows these schools at 126% and 150% of permanent F.I.S.H. capacity, respectively. Funding for construction is proposed in fiscal year 2008-2009.

Background Information

The District reviewed the possibility of: utilizing the Board Site, which currently houses the combined Jan Mann Opportunity School and Miami Douglas MacArthur Senior High School North (MacArthur North) male students, to situate State School "AA-2"; relocate the students to an alternate Board-owned location; and demolish/substantially modify the existing MacArthur North buildings to accommodate the K-8 Center. To determine the feasibility of this approach, a Castaldi Study (Study) was performed as required by the State Department of Education (DOE) and subsequently submitted to the DOE for review. That review yielded that only retrofitting, rather than demolition of the majority of the existing buildings, would be approved.

During this period of time, Shoma approached the District with an interest in exchanging the Board Site for the Subject Site. The Subject Site is located further to the north of the Board Site, and is part of a larger 73-acre tract of land owned by Shoma, slated to be developed primarily as residential. Given some of the constraints associated with the Board Site, as described above, the District also pursued a possible trade, which is governed by School Board Rule 6Gx13-3B-1.092, Disposal of Surplus Land and Other Real Property (Board Rule). This Board Rule allows the Board to dispose of land or other real property by several methods, including trade to a public or private entity or person. Pursuant to the Board Rule, each of the exchanging parties (School Board and Shoma) conducted an appraisal of each of the properties to be exchanged. The two appraisals commissioned by the School Board valued the Board Site at \$15,000,000 as is but assuming the ability to fully develop all acreage (including an approximate 5-acre wetland area on the Board Site's eastern side), and the Subject Site at \$13,500,000, demucked, filled, and with water retention requirements fulfilled; the difference between the two values is \$1,500,000 in favor of the School Board. The two appraisals commissioned by Shoma valued the Board Site at \$11,985,000 as is, and the Subject Site at \$10,680,000, also as is; the difference between the two values is \$1,305,000, in favor of the School Board. The terms and conditions of the proposed exchange include a payment to the School Board by Shoma of \$1.5 million; this amount may be reduced proportionately, should a portion of the Board Site's wetland area not be allowed to be developed in any beneficial way to Shoma (as more fully defined below), by the governing environmental agencies having jurisdiction over the required permitting and development process. Because jurisdictional determinations will be issued at a later date, likely past the time that the Subject Site is delivered to the Board, the exchange

agreement provides for cash, an irrevocable letter of credit or other instrument acceptable to the School Board, to be provided to the School Board by Shoma in the full amount of \$1.5 million, which will be held in escrow until such jurisdictional determinations are rendered.

Additional Information

The Subject Site is presently vacant land located within the City of Hialeah proper (City), and presently zoned as residential. The City Department of Planning and Zoning has indicated that siting of a school at this location is in conformance with the City's Comprehensive Development Master Plan. Below is a summary of other relevant due diligence results:

Environmental Assessments: The Phase I Environmental Site Assessment (ESA) commissioned by the District recommended further testing to determine any potential impacts of the former agricultural uses on the Subject Site, as well as any possible impacts from the operation of a former construction and demolition debris recycling and disposal facility (C&D Facility) north of the Subject Site. The District completed a Phase II ESA, which indicated that the groundwater had no exceedances above applicable standards. Arsenic, lead and benzopyrene in the soil exceeding the allowable Miami-Dade County Department of Environmental Resources Management (DERM) standards, and solid waste, estimated at 300 cubic yards, was found but confined to two (2) test pits. These issues will be mitigated as part of the process of de-mucking and backfilling the Subject Site. Shoma has agreed to complete this task, in accordance with acceptable District standards and as one of the terms of the proposed exchange agreement, described more fully below. This process will also be monitored and certified as to its completeness and compliance by a District-commissioned environmental consultant.

In addition to the Phase II ESA, an air quality test was conducted to verify that there is no impact to the Subject Site from the prior operation of a former C&D Facility on land located north of the Subject Site. The results of this study were favorable, indicating only ambient levels of methane, which levels are typically observed in the normal air and not considered harmful. The Phase II ESA also points out that DERM issued a permit letter for closure of the referenced C&D Facility on February 13, 2008; the closure requires removal of all debris, two feet of clean fill as the final site cover, and a perimeter berm. Several follow up site visits revealed that the C&D Facility has been cleared and leveled with limerock fill, and that there was no evidence of trash and debris. The District's environmental consultant has recommended no further testing of soil, groundwater or air quality for the Subject Site.

Jurisdictional Statements: A response from the South Florida Water Management District (SFWMD) is pending, although it is anticipated it will be similar to DERM's response, which indicated that the Subject Site contains jurisdictional wetlands, and a wetlands permit, including possible wetland mitigation, will be required prior to development. It should be noted that under the proposed terms of the exchange, Shoma is to secure all environmental permits,

including payment of wetland mitigation costs, required prior to the de-mucking and backfilling of the Subject Site. Shoma will likewise secure all permits required to satisfy the water retention requirements of the Subject Site, which will be provided by Shoma on the adjacent Shoma-owned property. This is an added benefit to the School Board as it means all of the Subject Site will be useable and without encumbrances for on-site water retention (i.e. a lake).

Aviation: The Miami-Dade Aviation Department (Aviation) indicated that Section 333.03, Florida Statutes, mandates that Miami-Dade County (County) adopt a land use zoning overlay for its system of airports. The County has not yet adopted such a zoning ordinance for Opa-Locka Executive Airport, which is the aviation facility relevant to review of the Subject Site. In the absence of a zoning ordinance, State Statute governs which, in this case, prohibits the construction of an educational facility at either end of the runway of a publicly-owned, public use airport within an area which extends five (5) miles in a direct line along the centerline of the runway. A small portion of the Subject Site (approximately 3.5 acres) along its northernmost property line, is located within the delineated area; however, under the preliminary site plan for the proposed K-8 facility, only a right-of-way, which is to be developed by Shoma and then dedicated to the City, and fringe parking/circulation, are proposed in this area. It should be noted that this condition is a vast improvement over conditions at the Board Site, which falls entirely within the delineated restricted area.

A copy of completed due diligence records for the Subject Site, including the presentations made to the SSPCC on this proposed exchange, will be submitted to the Board as supplemental information. Due to its voluminous nature, this information will be submitted in CD format, and a hard copy placed with Citizen's Information and the Recording Secretary, prior to the meeting of October 15, 2008. The legal description of the Subject Site is attached hereto and labeled as Exhibit "A".

Recommended Board Action

The SSPCC has recommended that staff present an item to the Board authorizing the Superintendent to finalize negotiations and execute an exchange agreement with Shoma, substantially in conformance with the following terms and conditions:

- the parties shall exchange the Board Site for the Subject Site. The Board Site is being exchanged in its "as is" condition;
- Shoma shall, at its expense, deliver the Subject Site to the District de-mucked and filled, which includes permitting and payment of any required wetland mitigation fees, in accordance with District specifications. The Board shall have the right to monitor, inspect and approve this site development work to ensure it is performed in accordance with District specifications;
- Shoma shall fulfill the storm water retention requirements for the Subject Site on Shoma's parent tract, at its expense, prior to closing;

- Shoma shall, at its expense, construct a road on the north side of the Subject Site, and shall dedicate said road to the City as a public right-of-way;
- this transaction is subject to acceptable results from all School Board due diligence, including environmental site assessments, the results of which have been received and are favorable as previously described more fully in this item;
- the School Board shall have the right to retain use, possession and occupancy of the Board Site until August 1, 2009, for a nominal fee of \$1;
- the sum of \$1,500,000 shall be held in escrow by the School Board Attorney's Office or designee acceptable to both of the exchanging parties, in the form of cash, an irrevocable letter of credit or other instrument acceptable to the School Board, pending final determination on the wetland mitigation requirements for the Board Site. The Board Site contains approximately 5 acres of wetlands, and Shoma has indicated that based on their preliminary research, up to 1.5 acres of those may potentially be classified as unusable "pristine" wetlands. As noted above, because this determination can only be made once the jurisdictional statements by the governing regulatory agencies are issued, the deadline for determining the appropriateness of a disbursement of any portion of the \$1,500,000 escrow amount has been set at or before August 1, 2010, with a possible one-year extension by mutual agreement of both parties. The parties agree that such funds will be proportionately reduced should there be an official determination by the governing environmental agencies (i.e., DERM, SFWMD, Army Corps of Engineers) that all or portions of the 1.5 acres of the Board Site containing pristine wetlands cannot be mitigated in any way, could not be developed, and have no beneficial use for Shoma. Beneficial use is generally defined as any use or benefit that Shoma may receive, or could have received, from the 1.5 acres, including, meeting water retention, open space or green space requirements, additional density, and/or fulfilling requirements of any governmental agency in connection with development of the Board Site, or development of the balance of Shoma's abutting property;
- in the event of default by either party, which default is not cured, the non-defaulting party shall be entitled to all remedies available at law or in equity, which may include, but not be limited to, the right to damages and/or to seek specific performance of the defaulting party's obligations under the exchange agreement;
- the closing of this transaction shall occur within 30 days of the Board's acceptance of the Subject Site, unless otherwise extended by mutual agreement of both parties. An out date for closing acceptable to both parties will be included in the final exchange agreement. All site development conditions contained herein shall be satisfied prior to closing; and

- for purposes of the exchange agreement, the Superintendent of Schools shall be the party designated by the Board to grant or deny all approvals or extensions required by the agreement, or to cancel or terminate the agreement.

RECOMMENDED:

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

1) adopt Resolution No. 08-91, designating the School Board-owned land located at 13835 NW 97 Avenue, Hialeah, to be unnecessary for educational purposes, solely for the explicit purpose of exchanging the property for similarly sized property located at approximately NW 144 street and NW 97 avenue; and

2) authorize the Superintendent to finalize negotiations and execute an exchange agreement with Shoma Homes at Bellagio, LLC, to acquire an approximate 15-acre parcel of land located at approximately NW 144 street and NW 97 avenue, Hialeah, in exchange for a 15-acre School Board-owned site located at 13835 NW 97 avenue, Hialeah, to situate state school "AA-2", a new K-8 Center proposed to relieve Hialeah Gardens Elementary School and Bob Graham Education K-8 Center, substantially in conformance with the terms and conditions described herein; and

3) authorize the Superintendent to execute any other documents necessary to effectuate the exchange of the subject properties; and

4) in the event negotiations for the exchange of the properties are unsuccessful, rescind Resolution No. 08-91, designating of the subject School Board-owned parcel as being unnecessary for educational purposes.

MCA:mca

RESOLUTION NO. 08-91

A RESOLUTION OF THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA ("BOARD"), DETERMINING THAT CERTAIN BOARD-OWNED LAND IS UNNECESSARY FOR EDUCATIONAL PURPOSES

WHEREAS, the Board owns and has under its jurisdiction certain land located at 13835 NW 97 Avenue, Hialeah, consisting of approximately 15 acres (Board Site), that is capable of being utilized in the best interest of the people of Miami-Dade County; and

WHEREAS, after due consideration and consultation, the Board has determined that the Board Site described in Exhibit 1 attached hereto, is unnecessary for educational purposes, solely for the explicit purpose of exchanging the Board Site for an approximate 15-acre parcel located at approximately NW 144 Street and NW 97 Avenue, Hialeah (Subject Site); and

WHEREAS, in the event negotiations for the exchange of these properties are unsuccessful, the designation of the Board Site as being unnecessary for educational purposes shall be automatically rescinded.

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

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

SECTION 2. The School Board of Miami-Dade County, Florida, hereby designates the Board Site described in Exhibit 1 attached hereto as unnecessary for educational purposes, solely for the explicit purpose of exchanging the Board Site for the Subject Site.

SECTION 3. In the event negotiations for the exchange of these properties are unsuccessful, the designation of the Board Site as unnecessary for educational purposes shall be automatically rescinded.

SECTION 4. This Resolution shall take effect immediately upon its passage.

ADOPTED this Fifteenth day of October, A.D., 2008

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

Chair

ATTEST:

Secretary

Exhibit 1
to Resolution No. 08-91

Tract 42, and Portions of Tracts 40 and 41, of "FLORIDA FRUITS LAND COMPANY'S SUBDIVISION No. 1, in Section 21, Township 52 South, Range 40 East, as recorded in Plat Book 2, at Page 17 of the Public records of Dade County, Florida, being said portions of Tracts 40 and 41 lying North and adjacent to the Northerly Right-of-Way line of GRAHAM'S DAIRY CANAL, and legally described as follows: Commencing at the SW. corner of said Section 21, also the SW. corner of said Tract 41; thence N 62°17'55"W along the West line of said Section 21 and Tract 41 for 115.09 feet to the POINT OF BEGINNING; thence N 89°38'18"E along a line parallel to and 115 feet North of the South line of said Section 21 and Tract 41 for 691.59 feet; thence N 77°58'16"E for 675.19 feet; thence N 44°36'41"E 78.81 feet; thence N 11°23'12"E 57.57 feet to a point on the North line of said Tract 40; thence S 89°38'06"W along the North line of said Tracts 40 and 41 for 1393.33 feet to the NW. corner of said Tract 41; thence S 2°37'55"W for 215.03 feet to the POINT OF BEGINNING. Reserving the West 40 feet thereof for Public Road Right-of-Way, and subject to a canal reservation over and across the West 110 feet of entire land (including Tract 42). Lying and being in Dade County, Florida, and containing 15.6747 gross acres, and 15.1741 net acres after dedication of the West 40 feet.

LOCATION MAP

theoretical NW 144 Street

Subject Site
approximately 15.199 acres

NW 97 AVE

Board Site
approximately 15.197 acres

I-75

NW 138 Street

LEGEND



Subject Site

(not to scale)



Exhibit "A"

LEGAL DESCRIPTION:

A PORTION OF TRACTS 45 AND 46 IN SECTION 21, TOWNSHIP 52 SOUTH, RANGE 40 EAST, "FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 17, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER (S.W. 1/4) OF SAID SECTION 21; THENCE SOUTH 02°37'55" EAST ON THE WEST LINE OF SAID SOUTHWEST QUARTER (S.W. 1/4) OF SECTION 21 A DISTANCE OF 660.25 FEET TO THE INTERSECTION WITH THE WESTERLY PROJECTION OF THE NORTH LINE OF SAID TRACT 46; THENCE NORTH 89°37'04" EAST ON SAID WESTERLY PROJECTION AND SAID NORTH LINE FOR 15.01 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF N.W. 97TH AVENUE; THENCE CONTINUE NORTH 89°37'04" EAST ON SAID NORTH LINE FOR 1276.30 FEET; THENCE SOUTH 00°22'42" EAST FOR 498.11 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST; THENCE SOUTHWESTERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°00'00" AND AN ARC DISTANCE OF 38.27 FEET TO A POINT OF TANGENCY; THENCE SOUTH 89°37'18" WEST FOR 1230.72 FEET TO THE INTERSECTION WITH THE SAID EAST RIGHT-OF-WAY LINE OF N.W. 97TH AVENUE; THENCE NORTH 02°37'55" WEST ON SAID EAST RIGHT-OF-WAY LINE FOR 523.43 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING, AND BEING IN MIAMI-DADE COUNTY, FLORIDA AND CONTAINING 662,077 SQUARE FEET (15.1982 ACRES) MORE OR LESS.