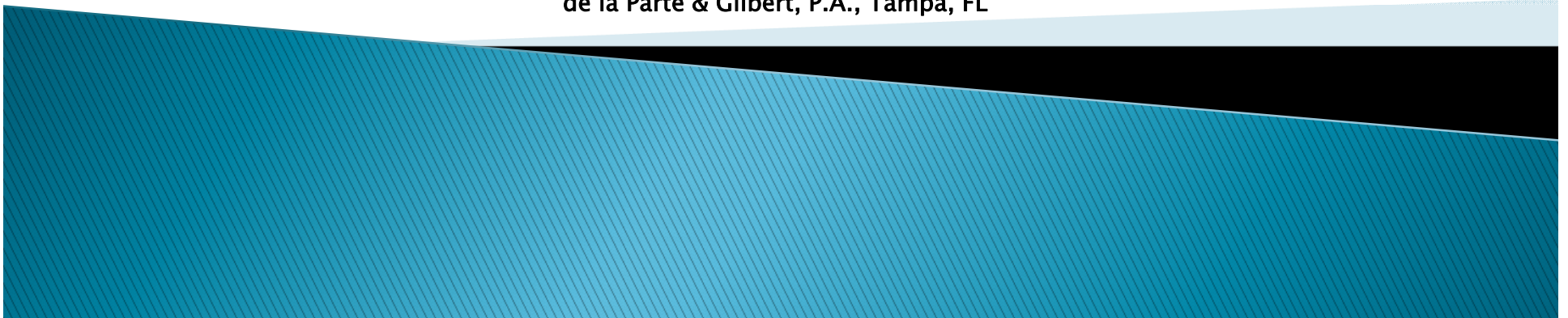


Resolving Simple or Difficult Cases

What is Most Important to the Condemnor

Presented by:
Debra W. Schiro, Esq.
Blueprint 2000, Tallahassee, FL
and
Vivian Arenas-Battles, Esq.
de la Parte & Gilbert, P.A., Tampa, FL



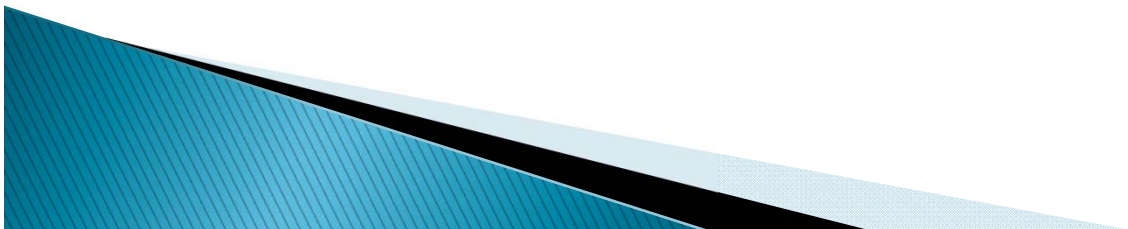
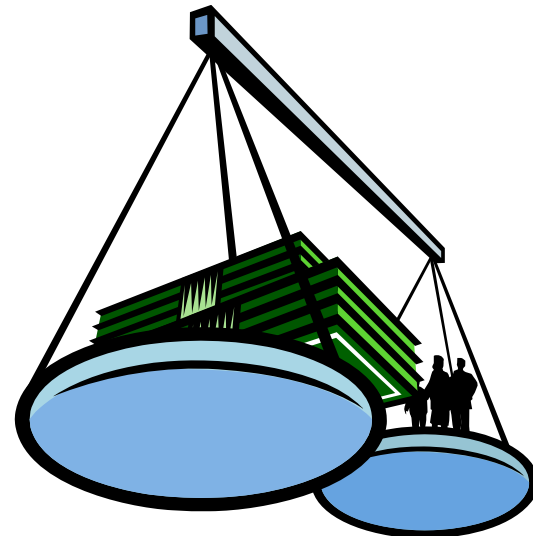
▶ Introduction

- What do condemnors consider in settling cases?



▶ Attorney's fees and costs

- Condemnor
 - Outside v. In-House counsel
- Condemnee
 - Hourly v. benefit fees
 - Non-monetary claims
 - Incentives



HOW ATTORNEYS' FEES AND COSTS ARE CALCULATED

For purposes of its presuit, initial offer to purchase your real estate, Blueprint 2000 will include an amount to reimburse you for any attorneys' fees and costs you may incur in review of the offer. It is your choice whether to hire an attorney or other experts, and you should be aware that you may be responsible for litigation costs. This summary will provide an explanation of how Blueprint 2000 calculates the amount of attorneys' fees and costs that is included in your offer.

Attorneys' fees and costs are calculated by taking 33% of the incentive amount contained in Blueprint 2000's initial offer. However, in no event will this amount be less than \$6,000.00, or greater than \$25,000.00. The incentive amount is offered to encourage early settlement of the acquisition, and Blueprint 2000 benefits from an early and amicable settlement. Therefore, the reimbursement amount for attorneys' fees and costs is calculated as 33% of the incentive amount, subject to the limited exceptions stated above. This calculation is consistent with Florida Statutes.

The right for you to receive the attorneys' fees and costs reimbursement payment contained in the offer is conditioned upon Blueprint 2000's receipt of an attorney authorization letter prior to acceptance of the initial offer. Therefore, if you do not provide Blueprint 2000 with an executed attorney authorization letter before you accept Blueprint's offer, you will not be eligible for the reimbursement payment.

Any expert costs, such as appraisal or engineering, will be reimbursed pursuant to section 73.091, Florida Statutes.

► Expert fees and costs



▶ Other Litigation costs

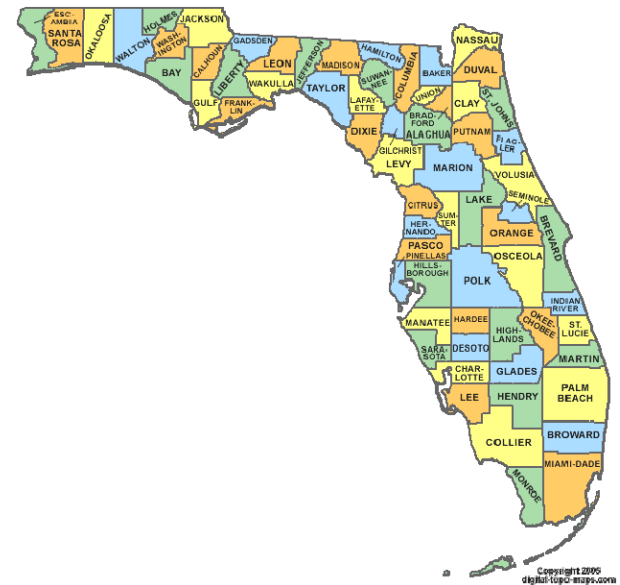
- Court reporters
- Exhibit costs
- Jury transportation
- Statutory interest



- ▶ Whether settlement agreement resolves all outstanding issues and interests



- ▶ Who is the condemnor?
 - FDOT
 - County–BOCC approval required
 - Municipality –
 - Other
 - Intergovernmental Agency
 - Water Management District
 - Other state agencies



- ▶ Who is the condemnee?
 - Individual?
 - Corporation?
 - Connections to community?
 - Length of time on property?
 - Historical significance?



- ▶ Prior parcel settlements along same project



- ▶ How many unsettled parcels are left on project?
 - Timing of project/deadlines for bidding project and funding deadlines

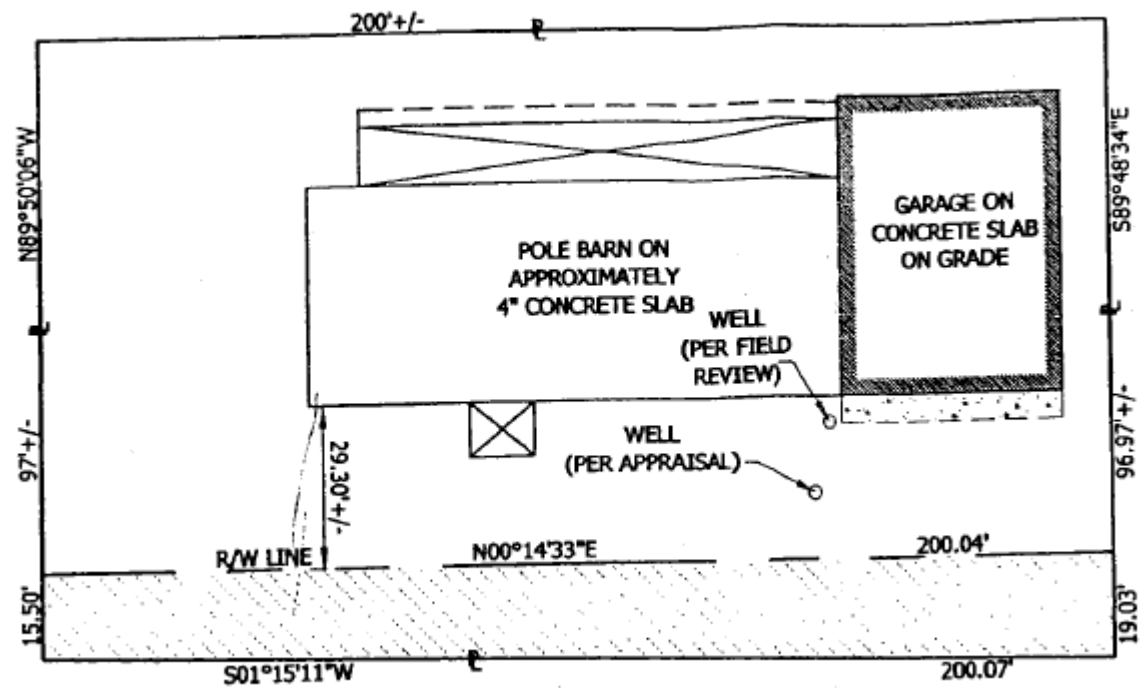


- ▶ Complexity of issues presented by case
 - Vacant land v. improved property
 - Residential v. Commercial property
 - Rental properties
 - Scope of project issues
 - Differences in highest and best use
 - Land use issues

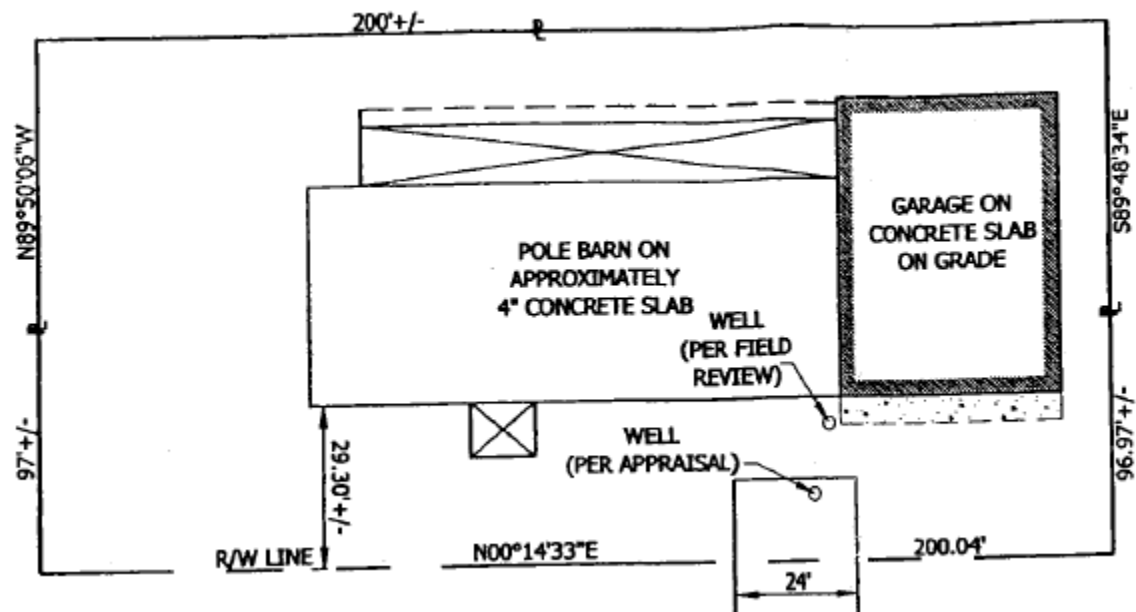


Scenario 1





Site plan with taking area



Site plan after taking



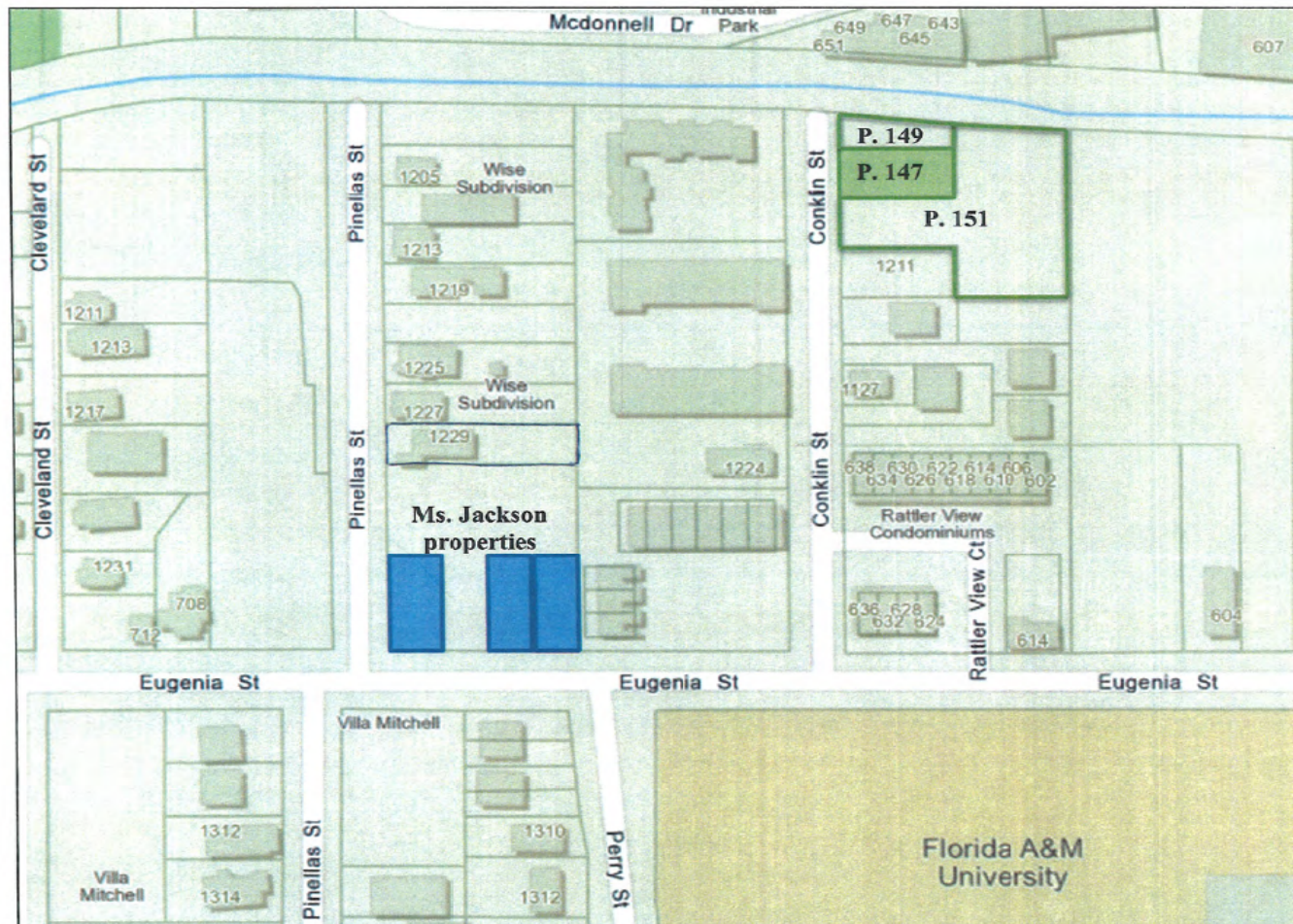
Photo of site after taking

- ▶ Complexity of issues presented by case
 - Parent tract issues
 - Title/ownership issues



Scenario 2

Map of Ms. Jackson Properties v. Parcels 147, 149, and 151



Bert Hartsfield, CFA

Leon County Property Appraiser


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Search


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The Tax Roll is compiled by the Legal Descriptions as recorded in the Public Records of Leon County. Location addresses are not used in the preparation of the Tax Roll. They should not be used for searches or preparation of legal documents. Parcel ID numbers are for the certified year only.

Parcel Information

Parcel ID : 4101202270000
 Parent Parcel: N/A
 Owner(s) : JACKSON WILLIE M
 1964 LAWSON RD
 TALLAHASSEE FL 32308

Location : 1207 CONKLIN ST
 Legal : 1 1S 1W .13 A
 IN NW 1/4 OF NW 1/4
 DB 20/181 146/85 OR 433/403
 OR 1529/811 815 1572/80
 1208 CONKLIN ST

Sales Information

Date	Price	Book	Page	Imp/Vac	Instrument Type
11/2005	\$0.00	4233	1154	V	
04/1992	\$8,500.00	1572	0080	V	WARRANTY DEED
01/1978	\$3,500.00	0909	0376	V	WARRANTY DEED
01/1977	\$4,300.00	0879	0336	V	CERT OF TITLE

All information provided by this online Internet resource is subject to verification by the Leon County Property Appraiser office. The Parcel and Sale Information is updated daily.

2010 Certified Property Value

Taxing Authority	Rate	Market	Assessed	Exempt	Taxable
County	7.85	\$30,000.00	\$30,000.00	\$0.00	\$30,00
MSTU - EMS	0.5	\$30,000.00	\$30,000.00	\$0.00	\$30,00
School - State Law	5.536	\$30,000.00	\$30,000.00	\$0.00	\$30,00

School - Local board	2.488	\$30,000.00	\$30,000.00	\$0.00	\$30.00
City	3.7	\$30,000.00	\$30,000.00	\$0.00	\$30.00
Water Management	.045	\$30,000.00	\$30,000.00	\$0.00	\$30.00

Building Value: \$0.00

Land Value: \$30,000.00

SOH Differential: \$0.00

2010 Building Information

Property Use : VACANT

Actual Year Built	Base SQ Ft	Auxiliary SQ Ft	Millage Code	Classified Use	Number c Buildings
	0	0	1	0	0

Additional Information

[Tax
Estimator](#)
[Homestead Portability
Calculator](#)
[Clerk of
Courts](#)
[GIS
Map](#)
[Tax
Collector](#)
[Permits](#)
[Property In
Sheet](#)

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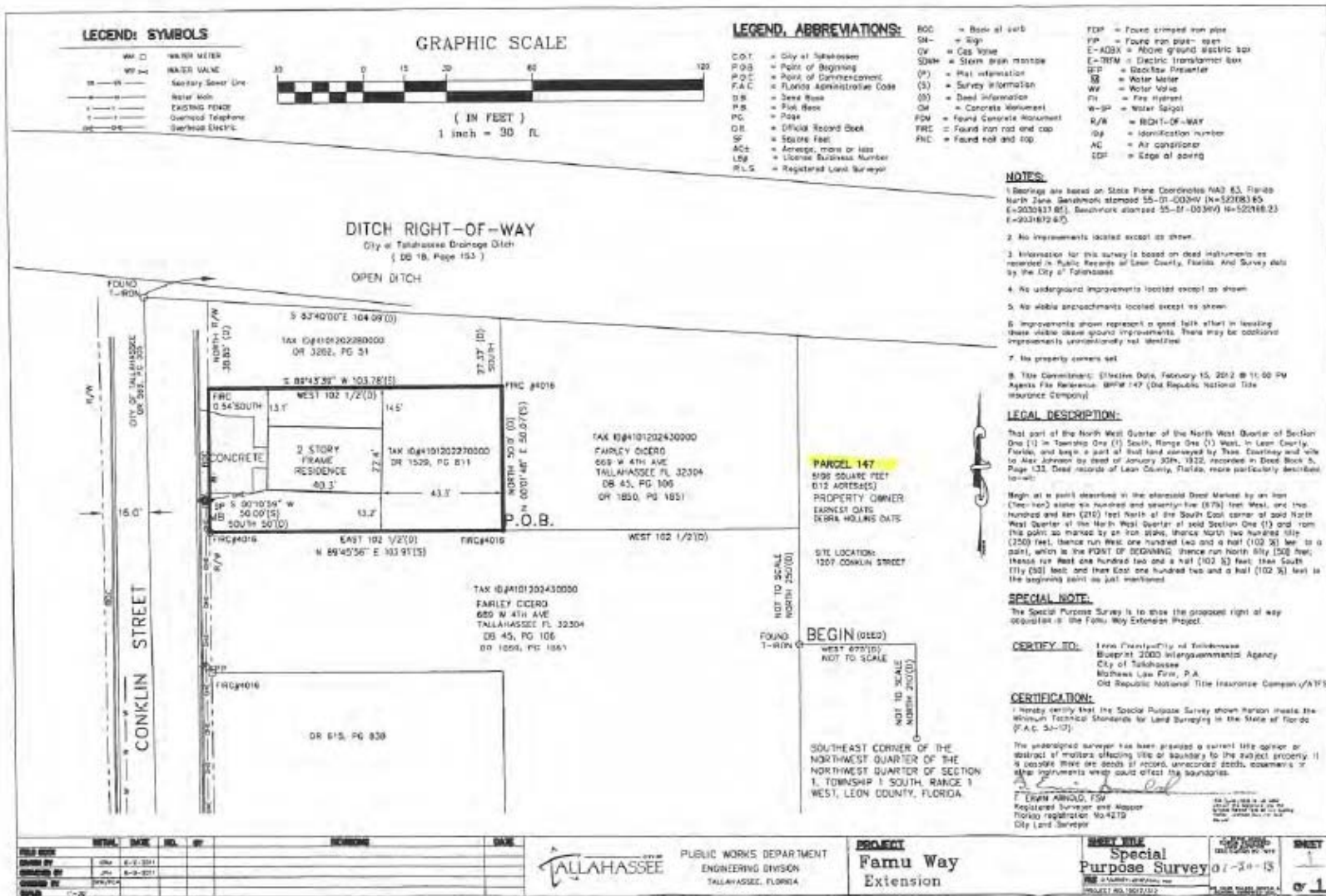
Courthouse Annex, 315 S. Calhoun St, Third Floor, Tallahassee, FL 32301

Phone (850) 488-6102 Fax (850) 922-7238

Office Hours: 8am - 5pm, Monday through Friday



Composite Exhibit "A"



Bert Hartsfield, CFA
Leon County Property Appraiser

Bert Hartsfield



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The Tax Roll is compiled by the Legal Descriptions as recorded in the Public Records of Leon County. Location addresses are not used in the preparation of the Tax Roll. They should not be used for title searches or preparation of legal documents. Parcel ID numbers are for the certified year only.

Parcel Information

Parcel ID : 4101202280000

Parent Parcel: N/A

Owner(s) : JONES KENNETH B
PO BOX 20908
TALLAHASSEE FL 32316

Location :

Legal : 1 1S 1W .09 A
IN NW 1/4 OF NW 1/4
OR 909/376 1350/2109 2110A
OR 1444/934 1473/2053

Sales Information

Date	Price	Book	Page	Imp/Vac	Instrument Type
03/2005	\$100.00	3252	51	I	QUIT CLAIM
01/1978	\$3,500.00	0909	0376	I	WARRANTY DEED

All information provided by this online Internet resource is subject to verification by the Leon County Property Appraiser office. The Parcel and Sale Information is updated daily.

2011 Certified Property Value

Taxing Authority	Rate	Market	Assessed	Exempt	Taxable
County	7.85	\$121,351.00	\$121,351.00	\$0.00	\$121,351.00
MSTU -EMS	0.5	\$121,351.00	\$121,351.00	\$0.00	\$121,351.00
School - State Law	5.536	\$121,351.00	\$121,351.00	\$0.00	\$121,351.00
School - Local board	2.498	\$121,351.00	\$121,351.00	\$0.00	\$121,351.00
City	3.7	\$121,351.00	\$121,351.00	\$0.00	\$121,351.00
Water Management	.046	\$121,351.00	\$121,351.00	\$0.00	\$121,351.00

Building Value: \$101,351.00

Land Value: \$20,000.00

SOH Differential: \$0.00

2011 Building Information

Property Use : 0100 - Single Family Residential

Actual Year Built	Base SQ Ft	Auxiliary SQ Ft	Millage Code	Classified Use	Number of Buildings
2006	1760	54	1	0	1

Additional Information

<u>Tax Estimator</u>	<u>Homestead Portability Calculator</u>	<u>Building Sketch</u>	<u>Clerk of Courts</u>	<u>GIS Map</u>	<u>Tax Collector</u>	<u>Permits</u>	<u>Property Info Sheet</u>
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Hold your cursor over the field heading to see an explanation of the field.

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Courthouse Annex, 315 S. Calhoun St, Third Floor, Tallahassee, FL 32301

Phone (850) 488-6102 Fax (850) 922-7238

Office Hours: 8am - 5pm, Monday through Friday

LEGEND, ABBREVIATIONS:

P.O.B. = Point of Beginning
P.O.C. = Point of Commencement
F.A.C. = Florida Administrative Code
D.B. = Deed Book
P.B. = Plat Book
PG. = Page
O.R. = Official Record Book
SF. = Square Feet
AC± = Acreage, more or less
LB# = License Business Number
R.L.S. = Registered Land Surveyor

R/W = RIGHT-OF-WAY
ID# = Identification number
EOP = Edge of paving
BDC = Block of curb
SN- = Sign
(P) = Plot information
(S) = Survey information

(D) = Deed information
CM = Concrete Monument
FCM = Found Concrete Monument
FIR = Found iron rod and cap
FNC = Found nail and cap
FOP = Found crimped iron pipe
FIP = Found iron pipe - open

RECEIVED MAR 6 2012

NOTES:

1 Bearings are based on State Plane Coordinates NAD 83, Florida North Zone. Benchmark stamped 55-01-0024V (N=522083.65 E=2030937.85). Benchmark stamped 55-01-0034V (N=522169.25 E=2031872.67).

2. No improvements located except as shown.

3. Information for this survey is based on deed instruments as recorded in Public Records of Leon County, Florida. And Survey data by the City of Tallahassee.

4. No underground improvements located except as shown.

5. No visible encroachments located except as shown.

6. Improvements shown represent a good faith effort in locating those visible above ground improvements. There may be additional improvements unintentionally not identified.

7. No property corners set.

8. Title Commitment: Effective Date, January 5, 2012 @ 11:00 PM Agents File Reference: BPFV 149 (Old Republic National Title Insurance Company)

LEGAL DESCRIPTION:

Begin at a point 777.4 feet West and 510 feet North of the Southeast corner of the Northwest Quarter of the Northwest Quarter of Section 1, Township 1 South, Range 1 West, and run thence West 102.15 feet, thence North 40 feet, thence East 102.15 feet, thence South 40 feet to the POINT OF BEGINNING. Less and Except: that certain encroachment on the above described property which is described in that certain warranty deed granted to the City of Tallahassee, dated December 31, 1927 and recorded in Deed Book 15, Page 74 of the Public Records of Leon County, Florida, and more particularly described in the survey of John Dubose.

More particularly described by recent survey as follows:

Legal description--result of survey

A 0.08 acre +/- parcel, being the remainder of lands described in Official Record Book 1473, Page 2053, in the Public Records of Leon County, Florida, being more particularly described by metes and bounds as a result of field survey performed by Vern Taylor & Associates, Inc. dated 03/20/05, as follows:

Begin at an iron pipe 777.4 feet West and 510 feet North of the Southeast corner of the Northwest Quarter of the Northwest Quarter of Section 1, Township 1 South, Range 1 West, Leon County, Florida, thence run West (bearing base) 103.45 feet to an iron pipe on the Eastern right-of-way boundary of Conklin Street, thence along said right-of-way boundary run North 38.85 feet to the Southern boundary of a City of Tallahassee drainage ditch right-of-way as recorded in Deed Book 18, Page 74, in the Public Records of Leon County, Florida, thence leaving said Eastern right-of-way boundary run along said drainage ditch right-of-way South 83 degrees 40 minutes 00 seconds East 104.09 feet, thence leaving said ditch right-of-way run South 27.37 feet to the POINT OF BEGINNING containing 3,425 square feet or 0.08 Acre, more or less.

SPECIAL NOTE:

The Special Purpose Survey is to show the proposed right of way acquisition of the Famu Way Extension Project.

CERTIFY TO: Leon County--City of Tallahassee
Blueprint 2000 Intergovernmental Agency
City of Tallahassee
Mathews Law Firm, P.A.
Old Republic National Title Insurance Company/AFFS.

CERTIFICATION:

I hereby certify that the Special Purpose Survey shown herein meets the Minimum Technical Standards for Land Surveying in the State of Florida (F.A.C. 54-17).

The undersigned surveyor has been provided a current title opinion or abstract of matters affecting title or boundary to the subject property. It is possible there are deeds of record, unrecorded deeds, easements or other instruments which could affect the boundaries.

F. Erwin Arnold
F. ERWIN ARNOLD, FSM
Registered Surveyor and Mapper
Florida registration No. 4279
City Land Surveyor

This Survey Map is not valid unless the Surveyor and Map are duly Licensed and the Survey is properly recorded in the Public Records of the State of Florida.

DITCH RIGHT-OF-WAY

City of Tallahassee Drainage Ditch
(DB 18, Page 153)

OPEN DITCH

LEGEND: SYMBOLS

WM □ WATER METER
WV --- WATER VALVE
SS --- Sanitary Sewer Line
W --- Water Main
X --- EXISTING FENCE

GRAPHIC SCALE



(IN FEET)
1 inch = 30 ft.

PARCEL 149
2845 SQUARE FEET
0.07 ACRES(±)

PROPERTY OWNER:
KENNETH B. JONES
P.O. BOX 20908
TALLAHASSEE, FLA. 32316

SOUTHEAST CORNER OF THE
NORTHWEST QUARTER OF SECTION
1, TOWNSHIP 1 SOUTH, RANGE 1
WEST, LEON COUNTY, FLORIDA.

REVISION	DATE	BY	REVISION	DATE
1	6-2-2011	CRM	ADD CERTIFICATIONS	2-25-12
2	6-9-2011	CRM		
3	24/2/12	CRM		



PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
TALLAHASSEE, FLORIDA

PROJECT
Famu Way
Extension

SHEET TITLE
Special
Purpose Survey
FILE IN: 2-28-12
PROJECT NO. 11607/312

SHEET
1
OF 1

Composite Exhibit "A"

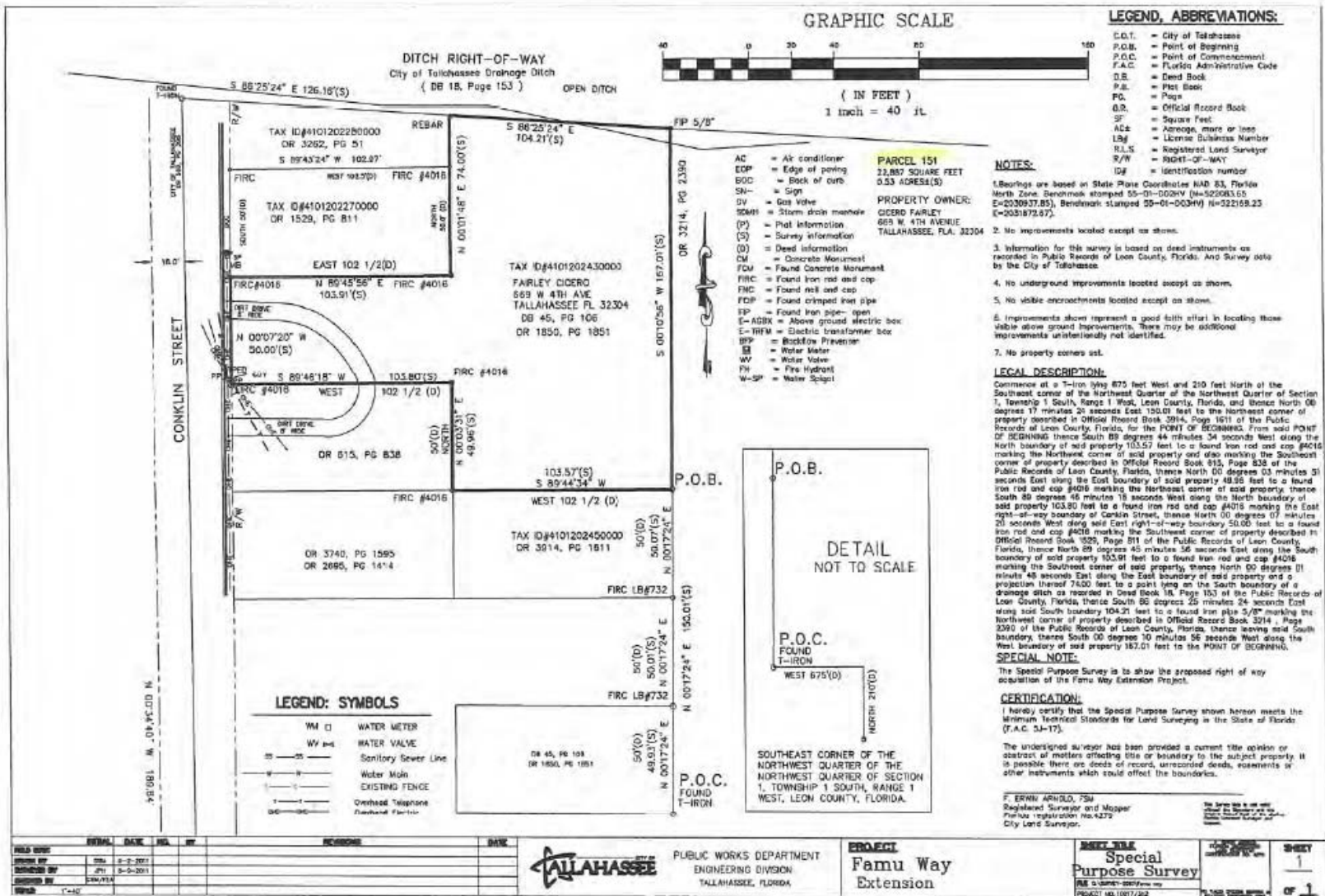
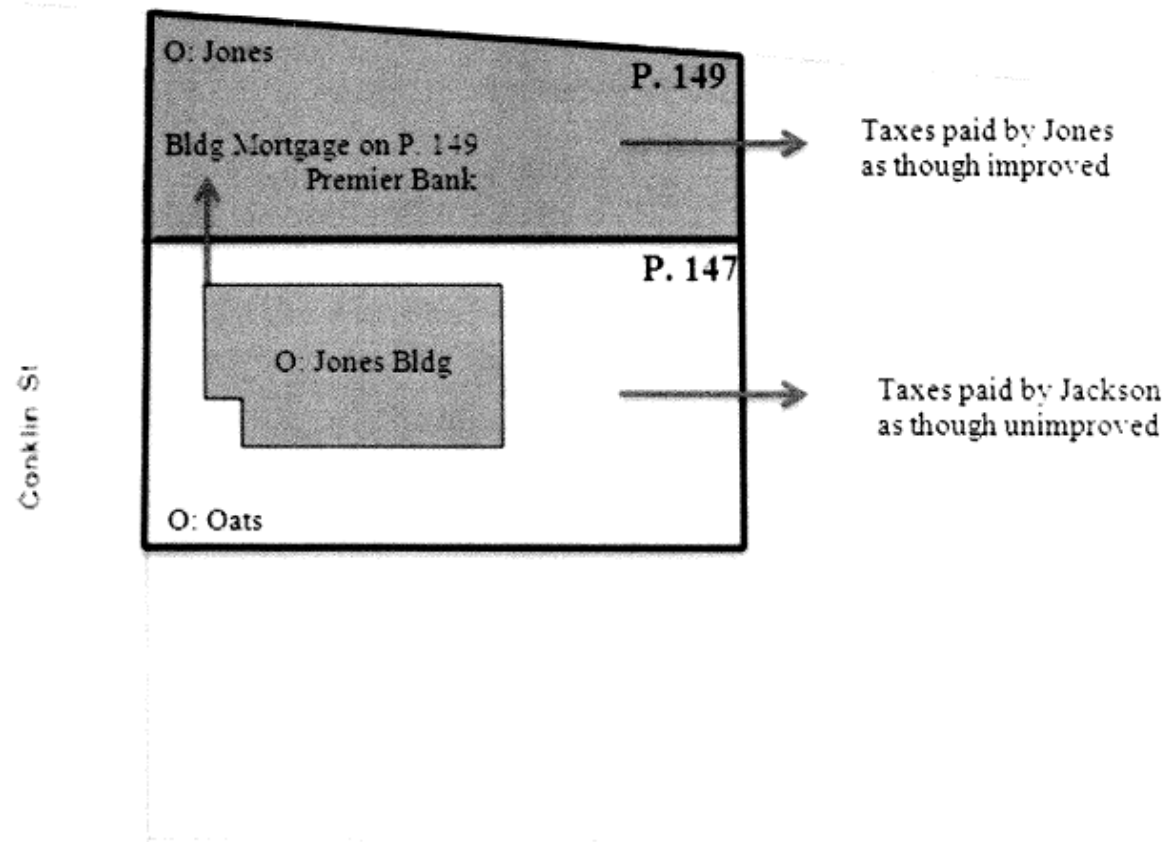
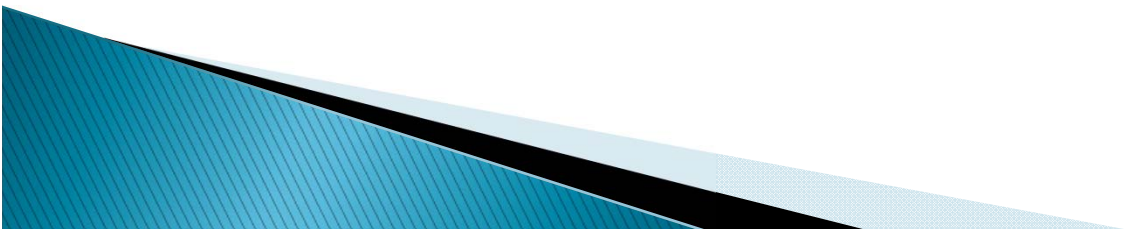


DIAGRAM OF INTERESTS FOR PARCELS 147 & 149



As shown in the diagram above, Oats is the record owner of parcel 147. However, Jones erected a building on parcel 147, though he is actually the record owner of parcel 149, abutting parcel 147 to the north. Additionally, Jones obtained a mortgage for the building placed on parcel 147, but the mortgage attached to parcel 149. Furthermore, Jackson has been paying taxes on parcel 147, rather than Oats.

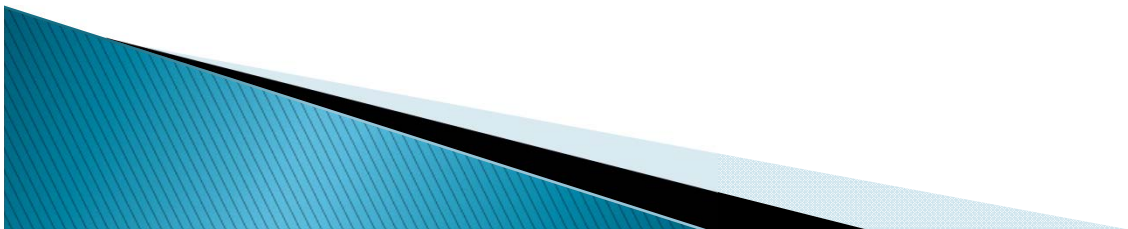
- ▶ Complexity of issues presented by case
 - Appellate issues
 - Multiple jurisdictions involved in taking



- ▶ Problems with appraisal reports of condemnor/condemnee
 - Old sales
 - Unsupported damages
 - Flawed studies
 - Legal instructions
 - Problems with appraisal methodology
 - Prior appraisals



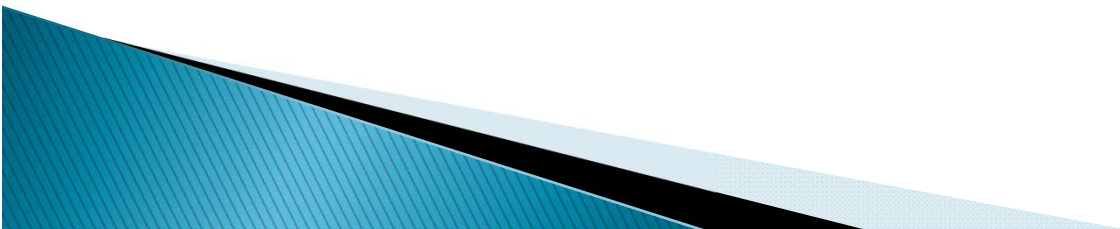
- ▶ Problems with business claims
 - Inconsistency between business damage claim and tax reporting
 - Ability to mitigate business damages
 - Whether cure is mitigating business damage or property



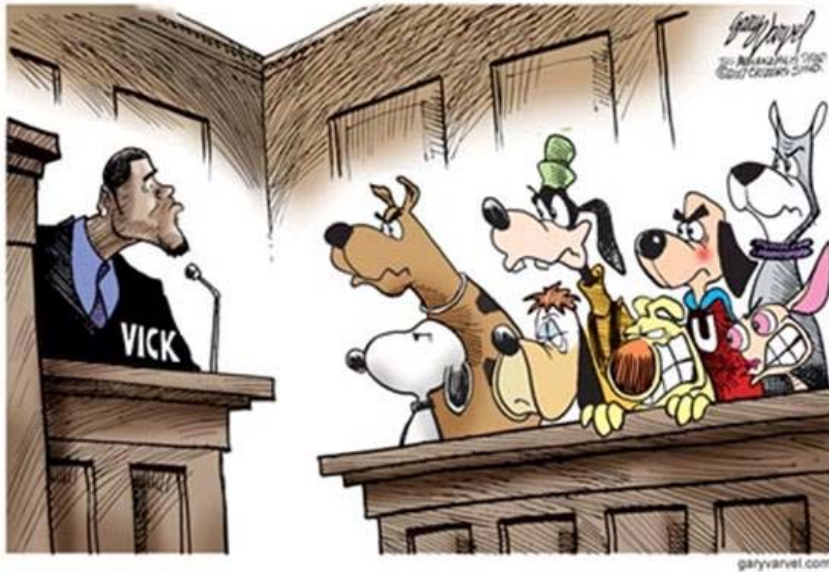
- ▶ Credibility of expert witnesses
 - Prior inconsistent positions
 - Expert experience
 - Expert qualifications
 - Is expert a hired gun for one side?



- ▶ Likelihood of jury sympathy for owner
 - Residential properties
 - Homestead
 - Churches
 - Cemeteries
 - Family owned businesses
 - Has property previously been taken by eminent domain?



- ▶ Potential jury pool



- ▶ Recent court awards for eminent domain takings in same county



Is Settlement Amount Supportable, Auditable, and Justifiable ?

▶ Useful reference sources:

- FDOT Right of Way Manual
<http://www.dot.state.fl.us/rightofway/ProceduresManual.shtml>
- Guidance Document 6–Administrative Settlements
- FDOT Settlement Approval Form



Guidance Document 6

ADMINISTRATIVE SETTLEMENTS

PURPOSE

The purpose of this document is to provide guidance when preparing administrative and legal settlement justifications. This guidance document is intended to supplement and provide detail in the application of the settlement criteria contained in **Section 7.2, Negotiation Process**.

REFERENCE

Section 7.2, Negotiation Process
Section 73.092, Florida Statutes

6.1 Settlement Criteria

The following factors, as applicable, should be considered and to the extent possible addressed in **Form No. 575-030-24, Settlement Approval**:

- (A) **Information Contained in All Available Appraisals and Business Damage Reports, Including those of the Owner:** Consider any information in available reports which might create exposure to a higher value being determined at trial. The written narrative should:
 - (1) Clearly state the information and estimate the monetary effect;
 - (2) Explain the use of any information which was specifically rejected by the review appraiser as inappropriate or unsupported and
 - (3) Discuss any information not previously reviewed with the Department's appropriate expert and document the results of the discussion.
- (B) **Substantial Differences of Opinion Regarding Valuation Issues:** Consider the impact that a substantial difference of opinion between experts may have on the outcome of litigation, for

example, the determination of highest and best use. The written narrative should:

- (1) Set out the specific issues causing the difference of opinion;
 - (2) Clearly explain the legitimacy of the opposing opinion including whether it is supported by an appraisal report or other written information;
 - (3) Explain how this difference may create a substantive exposure at the time of litigation;
 - (4) Provide a monetary estimate of the exposure; and
 - (5) Document the results of discussion of the issues with the review appraiser.
- (C) **Complexity of Severance or Other Issues Leading to Uncertainty in Value:** Identify complex valuation issues such as severance damages which may have an unfavorable impact on the litigation outcome. The written narrative should:
- (1) Provide a specific analysis of the issues and the estimated monetary exposure; and
 - (2) Indicate the results of discussion of the issues with the review appraiser.
- (D) **Handling of Legal Issues in Approved Appraisals:** Identify any items in the approved appraisal which are not in accordance with the current assessment of relevant legal issues as interpreted by the Department's attorney. The written narrative should:
- (1) Explain the specific circumstances and the possible impact on value; and
 - (2) Document the results of discussion of the issues with the review appraiser.
- (E) **Consideration of Time to Anticipated Title Transfer Date:** Apply a time adjustment to the amount of just and full compensation, if appropriate. The written narrative should:
- (1) State the basis for the time adjustment including the adjustment calculation; and

- (2) If the approved appraisal did not include a time adjustment explain why such an adjustment is applicable despite its omission from the approved report.
- (F) **Credibility of Expert Witnesses:** Identify the strengths and weaknesses of expert witnesses for both the Department and the owner. The written narrative should:
 - (1) Identify any anticipated weaknesses in the Department's expert witness testimony, and the possible impact on the litigation outcome; and
 - (2) Indicate whether this criterion is being considered as a major or minor factor in the justification.
- (G) **Likelihood of Jury Sympathy for the Owner:** Analyze intangible items such as an owner's age, health or public image which might influence a jury. The written narrative should:
 - (1) State why there is a presumption of jury sympathy; and
 - (2) Document whether this criterion is considered a major or minor factor in the justification.
- (H) **Possibility of Obtaining an Unbiased Jury:** Juries are presumed to be unbiased. However, if a rare set of specific circumstances exist which are expected to create a bias against the Department, this may be considered as a factor in recommending a settlement. The written narrative should:
 - (1) Explain why a jury may be biased; and
 - (2) Document whether this criterion is considered a major or minor factor.
- (I) **Recent Court Awards for Eminent Domain Takings:** Consider recent jury verdicts for similar properties acquired in the same geographic area by eminent domain. The written narrative should:
 - (1) Not presume a verdict based on a 50/50 split between the Department's and owner's testimony; and
 - (2) Include a specific analysis of verdicts considered and the source of all data.

(J) **Potential Cost of Litigation:** Consider the anticipated cost of supporting the eminent domain action and identify the savings expected to result from avoiding some, or all, of this cost. The cost of potential litigation refers to any cost that would be incurred in the future if the parcel were not settled; i.e., an estimate of additional cost beyond that already incurred. The written narrative should list each cost that is expected to be avoided by approval of the settlement. Cost of litigation can include, but is not limited to:

- (1) Outside counsel fees;
- (2) The owner's attorney fees based on the fee schedule set forth in **Section 73.092, Florida Statutes**;
- (3) Expert witness fees, Department's and owners;
- (4) Any other court costs, court reporters, jury transportation, etc.; and
- (5) Statutory interest on the difference between the Order of Taking deposit and the anticipated verdict, excluding business damages. The justification must include a calculation of the estimated interest exposure and an explanation of the basis of that calculation.

(K) **Other Relevant Information:** If there is other relevant information which would support a settlement, it should be explained in the written justification.

NOTE: When the settlement is an administrative settlement, the criteria described in items (F), (G), (H), and (J), should be discussed with the Department's assigned attorney and the discussion should be documented in the settlement justification. If a Department attorney has not been assigned to the specific parcel being administratively settled, the criteria may be discussed with the Office of the General Counsel or designee.

HISTORY

01/04/01, 12/28/05, 01/05/06, 09/19/07, 04/28/09

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
SETTLEMENT APPROVAL

575-030-24
RIGHT OF WAY
09/10
Page 1 of 2

MANAGING DISTRICT: _____ PARCEL NO.: _____
ITEM/SEGMENT NO.: _____ LITIGANT NAME/NO.: _____
SUIT STYLE: _____ DOT SUIT NO.: _____
F.A.P. NO.: _____ COUNTY: _____
DOT ATTORNEY: _____ DEFENSE ATTORNEY: _____
JUDGE: _____ TRIAL DATE: _____
COURT DOCKET NO.: _____

☐ ADMINISTRATIVE SETTLEMENT ☐ COURT ORDERED MEDIATION ☐ LEGAL SETTLEMENT
☐ OFFER OF JUDGMENT ☐ NON-COURT ORDERED MEDIATION ☐ OTHER SETTLEMENT

SETTLEMENT

Land \$ _____
Improvements _____
Severance/Real Estate Damages _____
Move Costs _____
Business Damages _____
Owner/Litigant Attorney Fee _____
Based on Benefit of \$ _____
Based on Nonmonetary Benefit of \$ _____
Owner/Litigant Appraisal Fee _____
Owner/Litigant Expert Fees _____
Owner/Litigant Costs (Specify) _____
Other _____
TOTAL SETTLEMENT \$ _____ 0.00

SUPPORT DATA

Owner Appraisal \$ _____ Appraiser _____
Owner Claim \$ _____
DOT Approved Appraisal \$ _____ Appraiser _____
Unapproved Appraisal(s) \$ _____
(If relevant)
Owner/Tenant Business Damage Claim \$ _____
DOT Business Damage Counteroffer \$ _____

Justification:

SUBMITTED BY: _____
☐ Right of Way Agent ☐ Trial Attorney _____ Date _____

☐ District Acquisition Administrator _____ Date _____
☐ Office of the General Counsel

APPROVED FOR SETTLEMENT: _____ Date _____
☐ District Right of Way Manager
☐ Assistant District Right of Way Manager

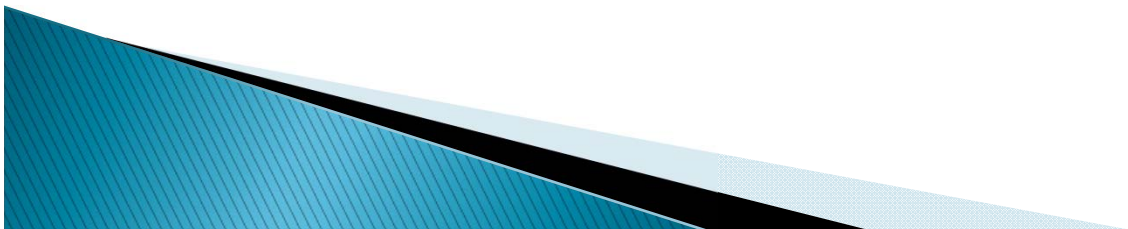
ADDITIONAL APPROVALS (as applicable)

☐ APPROVED FOR SETTLEMENT: _____ Date _____
Director, Office of Right of Way

7.6.9 Legal Settlements

7.6.9.1 For each legal settlement, ***Form No. 575-030-24, Settlement Approval*** shall be completed considering the criteria in ***Section 7.2, Negotiation Process***. The District Right of Way Manager shall ensure the written explanation fully describes how the settlement is reasonable, prudent, and in the best interest of the public and complies with the requirements of ***Section 7.2*** prior to approving the settlement. The District Right of Way Manager shall obtain any additional approvals as may be required pursuant to ***Section 7.2***. Legal settlements must be fully approved prior to entry of a final judgment.

7.6.9.2 The assigned attorney must coordinate with the District Relocation Administrator concerning any relocation benefits that may be included in or affected by the legal settlement in accordance with ***Section 9.2, General Relocation Requirements***.



- ▶ *** Disclaimer:** The information in this presentation is based upon the personal opinions and experiences of the presenters and is not meant to represent the opinions of clients, firms or agencies and does not constitute legal advice. Due to the rapidly changing nature of the law and our reliance on information provided by outside sources, the presenters do not warrant or guarantee the accuracy or availability of the content in this presentation.

